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Monday
March 27, 1989

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Rules and Regulations

Federal Register
Vol. 54, No. 57
Monday, March 27, 1989

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 916

[Docket No. AMS-FV-88-056FR]

Nectarine Grown in California; Amendments to the Size Requirements and Revision of the Maturity Regulations for Nectarines

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule, with maturity requirement modifications, the provisions of an interim final rule which changed size regulations and specified maturity requirements and maturity variance procedures for California nectarines. The increase in variety-specific size requirements for numerous nectarine varieties and the increase in minimum size requirements for non-listed varieties, not produced in commercially significant quantities, are designed to make nectarines more marketable and to give retailers and consumers a better product. The coverage of the size requirements also are changed by adding six varieties of nectarines to, and by removing four varieties from, the variety-specific size list. This action is designed to facilitate nectarine maturity determinations and promote marketing of the crop.

DATE: March 27, 1989.

FOR FURTHER INFORMATION CONTACT: G.J. Kelhart, Section Head, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 475-3919.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Marketing Agreement and Order No. 916 (7 CFR Part 916), regulating the handling of nectarines grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 520 handlers of plums, peaches, and nectarines subject to regulation under marketing orders (7 CFR Parts 916 and 917), and there are approximately 2,030 producers of these commodities in the regulated area. The reduction in the number of handlers from that listed in previous documents in this rulemaking proceeding reflects more recent information from the industry. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2), as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California nectarines may be classified as small entities.

Shipments of California nectarines are regulated by grade, maturity, and size under § 916.356 Nectarine Regulation 14 (CFR 916.356). A proposed rule concerning size and maturity regulations was published in the **Federal Register** on April 18, 1988 (53 FR 12690). A correction to the proposal was published in the **Federal Register** on May 12, 1988 (53 FR 16931). The proposed changes were recommended by the Nectarine Administrative Committee (hereinafter referred to as the committee) and the Department. Numerous comments were received in favor of and in opposition to the proposed rule.

After reviewing the comments received, changes were made to § 916.356 by an interim final rule issued on May 24, 1988, and published in the **Federal Register** and made effective on May 27, 1988 (53 FR 19226), and as corrected and published in the **Federal Register** on June 16, 1988 (53 FR 22609). The comments received as a result of the proposal were addressed in the interim final rule. Interested persons were invited to submit written comments concerning the interim final rule. Comments were received from the committee, the Small Business Administration (SBA), and Mr. Brian Leighton, an attorney (hereinafter referred to as the attorney) representing three entities which operate as handlers in the California nectarine industry.

This final rule is based upon the committee's recommendation, information submitted by the committee, comments received from those supporting and opposing the action, and other available information.

Inspected shipments of California nectarines for the 1987 season totalled 16,863,000 packages. The fruit was sold primarily in the fresh market. In 1987, the production value of California nectarines was about $65,545,000. Although this final rule will impose requirements on the handling of nectarines, exemptions from the inspection and certification requirements as specified in § 916.110 will continue. These exemptions include provisions for the shipment of minimum quantities of the fruit.

The interim final rule changed the size requirements for many varieties of nectarines. Paragraph (a) § 916.356 was revised to increase the variety-specific size requirements for 75 varieties of nectarines. Paragraph (a) was also revised to change the size requirements for four varieties of nectarines by removing them from the variety-specific size requirements and subjecting them to the minimum size requirements established for non-listed varieties. The minimum requirements for non-listed varieties were also changed. These changes were deemed necessary to remove from the market those sizes of fruit which were not well-received by

consumers. The changes were intended to foster repeat purchases and maintain consumer satisfaction. Early season purchases of small-sized nectarines may have a negative effect on total nectarine sales because consumers seldom make repeat purchases if they are dissatisfied with their original purchases. Increased size requirements are needed to make nectarines more marketable and are essential for the consumer satisfaction needed to maintain current markets and to build new markets. Pack-out reports from the committee indicate that there has been a 4 percent increase in shipments from 1987 to 1988. This suggests that the size requirement changes helped the industry meet program objectives.

The only comment opposing the changes in size requirements was received from the attorney. He requested that his comments on the size requirements on the proposed rule for plums (7 CFR 917.460, 53 FR 11672, April 8, 1988) be incorporated by reference in this rule. The comments, including the attorney's, received concerning the proposed change to the plum size regulations were addressed in the May 27, 1988, interim final rule (53 FR 19218). The attorney believes that the factors noted in the Department's decision to not approve a proposed increase in plum size requirements as discussed in the May 27, 1988, interim final rule should apply equally to changes in the required sizes of nectarines.

The Department disagrees with such a comparison and notes that the only similarity between the two actions is that both are concerned with size requirements. There was strong disagreement in the plum industry on the need for the size increases; on whether or not profitable markets for the plums would be eliminated; on whether shipments of some varieties would be disproportionately burdened by the higher size requirements; and on whether the impact of the size changes would be harsher on the early growing areas than on those in the later growing areas. Because of the wide divergence of views on these issues, the Department decided not to adopt the plum committee's size recommendations. Rather, the Department decided that further analysis and study of the plum size requirements was needed.

In the case of nectarines, however, there is a general consensus throughout the industry that an increase in size requirements would be beneficial to the industry as a whole in providing the fresh markets with nectarines of the sizes preferred. Information on the 1988 season did not indicate otherwise, as production volume and sales increased with the higher size requirements in effect. Accordingly, the Department adopts the size requirement changes as specified in the interim final rule.

Prior to 1980, nectarines were required to meet the maturity requirements of U.S. Grade No. 1. Under U.S. Grade No. 1, a nectarine is considered mature when it reached a condition that would ensure a proper completion of the ripening process. Nectarines picked and shipped at that minimum level of maturity often were not well received in the marketplace. Such fruit sometimes was too hard and lacked the flavor found in more mature fruit. Because such fruit was not received well by consumers early in the season, repeat purchases of later season nectarines were reduced. The committee met in May of 1980 and recommended that the Department provide for a higher maturity standard. Regulations were published in the **Federal Register** on May 16, 1980 (45 FR 32309). The higher maturity standard (well-matured) was and continues to be based on a system of color guides and other tests which were developed by officials of the Federal-State Inspection Service and ratified by the committee.

Since that time the committee and the nectarine maturity subcommittee and the Federal or Federal-State Inspection Service (hereinafter referred to as the inspection service) have worked together to ensure that the maturity requirements are properly applied to the many varieties of nectarines. In this regard, the committee and the inspection service meet every Fall to establish which color chip guides, and other tests, will be used to determine the maturity of each variety of nectarine during the next production year. Producers and handlers are invited to attend these meetings and are afforded an opportunity to voice objections or concerns regarding which color chip guides will be used. A representative of the Department attends these meetings to ensure that the committee complies with the provisions of the marketing order. The Department's representative prepares a report summarizing and analyzing the actions taken. This report, along with the minutes of the meetings and other pertinent information, are sent to Department headquarters. The committee's decisions are analyzed and any of the decisions may be disapproved by the Secretary. The requirements are published in the committee's handler bulletins and were specified in the interim final rule published in the **Federal Register** on May 27, 1988 (53 FR 19232).

To ensure that the higher maturity requirements have been applied fairly and are consistent with program objectives, a procedure has been implemented pursuant to which a handler or producer can obtain a variance from a particular color chip requirement. This procedure is described in detail in the interim final rule published in the **Federal Register** on May 27, 1988 (53 FR 19232). Under this procedure, the maturity subcommittee is given the authority to grant a variance to a particular color requirement if the fruit is well-matured but does not meet the designated color requirement. These procedures are also published in the committee's handler bulletins.

To facilitate maturity determinations, "well-matured" was established by the interim final rule in paragraph (a) of § 916.356 as a condition more advanced than mature, but not over-ripe or shriveled. In addition, § 916.356 of the interim final rule established specific skin color requirements and tolerances for determining the well-matured condition of 81 specific nectarine varieties. Annual changes in these requirements will be made based on recommendations of the committee in consultation with the inspection service and interested producers and handlers. Such annual changes must also be approved by the Department.

Opposition comments concerning the maturity requirements and variance procedures in the interim final rule were received from the attorney and the SBA. For a variety of reasons, the attorney objected to the designation of "well-matured" as a requirement of nectarine condition prior to picking. The attorney asserts that while a well-matured standard has been a requirement for nectarines since 1980, the term has not been published in the **Federal Register** or officially recognized by the inspection service. However, in our view the higher maturity requirements as applied since 1980 were authorized under the marketing order. Such requirements were specified in the interim final rule in Nectarine Regulation 14 on May 27, 1988 (53 FR 19232). The interim final rule was intended to facilitate maturity determinations and promote marketing of the crop.

The attorney suggests that a study conducted by Ervin D. Thuerk, as discussed in the interim final rule, fails to address issues of consumer satisfaction or dissatisfaction with U.S. No. 1 mature fruit. According to the attorney, some varieties of nectarines simply taste better than other varieties, whether they are at the well-matured stage or not. Thus, the attorney contends

that consumers' opinions of which fruit has better taste does not necessarily mean that higher maturity is desired by consumers. However, no evidence was submitted to substantiate this claim. The committee contends that consumer complaints are directly related to a lack of maturity of marketed fruit.

The attorney states that many color chips used in 1980 were much greener in color than those used now. He concludes that the fruit by today's standards must be more mature than fruit in 1980 with the result that there is less time for the fruit to be sent to the market and sold before spoiling. He contends that new color requirements favor varieties that are almost all red because new red varieties exceed the color standards prior to becoming well-matured.

The attorney contends that the color chip requirements are not uniformly indicative of the same degree of maturity for all varieties and that it is possible for nectarines to pass the maturity inspection based on an interior inspection of taste and consistency while the skin color fails to indicate a well-matured condition. Thus, some varieties are being discriminated against because they must stay on the tree until their skin meets color requirements, causing a decreased shelf-life or no shelf-life at all. The attorney states that if a variety, after reaching well-maturity based on taste and consistency, requires a one day delay to reach the well-matured stage based on skin color, it is discriminatory to have a specific color requirement for another variety that would require a delay of six or seven days. The attorney points out that a nectarine variety which is well-matured, but must wait for color chip approval, can become unmarketable in two days. Thus, he contends that shipment of fruit at the well-matured level based on color can place an undue hardship on some nectarines, particularly those shipped to distant markets. The attorney suggests that changes in color chips should be made to lessen the chances of the fruit arriving at market destinations overripe. Currently, the same maturity requirement for each variety applies, regardless of the destination of the fruit.

The committee has made a concerted effort to set the color standards for all varieties of nectarines at minimum levels of well-maturity for each variety. There are more chips in use today to account for the subtle color differences between varieties. It is in the interest of the industry as a whole to have each of its varieties with as wide a marketing window as possible.

The committee believes it is important that nectarines are well-matured when they reach the marketplace. It is the committee's intention to establish a color standard for each variety which would leave as much time as possible to get that variety to the marketplace recognizing that modern transportation systems allow most commodities to be within three to five days of most markets, thus allowing a reasonable shelf-life. Good business practice would seem to dictate that fruit with more advanced maturity should be shipped to less distant markets when spoilage is a concern. Also, it is important to note that the arrival quality of fruit can suffer when the fruit is improperly handled or shipped at higher or lower than desired temperatures.

The attorney contends that inspectors should use the color chips and other tests as guides but not as the determining factor in the inspection. He contends that the well-matured standard is too broad and ambiguous because it permits the committee to adopt various color requirements and maturity tests during the production season which could delay picking in any particular orchard. He asserts that if a particular variety fails to meet its predetermined color chip requirement and also fails to be approved by the maturity subcommittee and the variance appeal committee, that orchard may be completely lost, resulting in an undue and unfair financial loss to the producer. This action provides that the inspection service will use the maturity guides as listed in the regulations in making maturity determinations for specified varieties. For varieties not listed in the regulations, the inspection service will use such tests as deemed to be proper by the Nectarine Administrative Committee and the inspection service. However, a variance from the maturity guides for any listed variety is authorized pursuant to the regulations. Further, the time periods involved in the variance process are intended to resolve the appeal in as short a time as possible.

The attorney suggests that since 1980 the inspection service and the committee have not consistently applied color chip requirements or other maturity standards to all producers and handlers. His comment, and the comment received from the SBA, contend that the committee should not be in a position to establish color chip requirements that must be met by competitors of committee members. Likewise, the maturity subcommittee and the appeal committee should not be allowed to make variance decisions that affect their competitors. Both commenters believe this procedure raises the possibility of conflict of interest. The attorney contends that this precedent has led to inconsistent and sometimes unfair application of maturity standards. He suggests that the well-matured requirement, as implemented by the committee, has been used for volume control purposes and contends that the Department has not conducted proper oversight of the committee and the maturity subcommittee.

The history of the maturity determination process for nectarines over the last eight years has indicated that the procedures have worked well. The Department disputes the contention that the well-matured requirements have been used for volume control purposes. On the contrary, the purpose of this change is to promote marketing of the crop by assisting California nectarine producers and handlers in improving the quality of the nectarines they market. The implementation of color standards for each variety, or such other maturity tests as determined to be proper, are within the committee's of the marketing order. The actions of the committee with regard to maturity determinations are not unlike any other committee duties or actions authorized pursuant to the marketing order. Accordingly, the maturity determination process is not flawed by the participation of committee members. Further, with regard to Department oversight of the committee and the maturity subcommittee, the maturity determination process is subject to appropriate oversight, as are other marketing order activities. In our view, the maturity determination process has provided, over the years, fair and equitable treatment of producers and handlers.

The attorney and the SBA believe that decisions regarding maturity requirements should be assigned solely to the inspection service, and that the committee should be limited to an advisory role. This would allow the inspection service to determine which specific color chip or maturity test should be used for each variety. According to both commenters, the inspection service should also have the sole responsibility of granting variances. An alternate proposal by the attorney would give individual producers of a specific variety the responsibility to establish the color chip requirements for that variety.

Regarding these proposals, it should be noted that in the April 18, 1988, proposal, the inspection service would have been responsible for variances during a season and for changes between seasons. One purpose of the proposed change was to relieve the maturity subcommittee of the burden of making variances during the season

because committee members are dispersed over a wide geographic area and have daily responsibilities with regard to their own businesses. However, as discussed in the May 27, 1988, interim final rule and based upon comments received, it was determined that the procedures for handling variances should be similar to those that were already then in use. In addition, an appeal procedure was established. It was concluded that the inspection service and industry officials designated to make variance decisions have the necessary background and expertise in fruit maturity and knowledge about growing conditions in the production area. The Department believes the attorney's alternative proposal—that producers of a specific variety establish their own well-maturity standards—would not provide a uniform set of well-maturity requirements and would raise questions as to fairness and equitability. Based upon all information available, including comments received regarding the proposal, the procedures contained in this final rule best provide for a fair and equitable process for maturity determinations. Accordingly, the commenter's proposed changes are denied.

The attorney and the SBA commented on the composition of the appeal committee. Both commenters believe that the appeal committee should be comprised only of inspection service personnel to ensure that the committee's decisions are fair and knowledgeable. The attorney and the SBA contend that such decisions are impossible with the current membership consisting of one inspection service official and the chairmen of the plum and the peach committees, or their designees. The attorney contends that the two chairmen may not have sufficient knowledge of nectarine maturity characteristics to make informed decisions. The attorney and the SBA commenter also suggest that the appeal committee decisions could be biased against a nectarine variance because nectarines are market competitors of plums and peaches. The commenters conclude that it could be in the best interest of the two chairmen to keep nectarines off the market.

Both the committee and the California Department of Food and Agriculture (CDFA), under which the Federally licensed State inspectors serve, submitted comments to the proposed rule stating that full responsibility to allow or disallow variances should not be placed on the inspection service. Moreover, in issuing the interim final rule, the Department concluded that an appeal committee would represent a further level of review or determination of maturity subcommittee decisions. Further, the decision in the interim final rule establishing the membership on the appeal committee was based upon consideration that it was important that the members of the appeal committee be different from those serving on the maturity subcommittee, and that the appeal committee members be knowledgeable about crop and maturity conditions in the industry. The composition of the California tree fruit industry is such that many handlers and producers are involved with more than just one tree fruit. The sharp distinctions in California tree fruit industry, as suggested by the commenters, do not exist. Accordingly, this proposed change is denied.

According to recent information, the variance process worked well during the 1988 season. Since implementation of the interim final rule, the Department has not been informed of any variance problems such as those outlined by the attorney and SBA. Thus, there is no reason to substantially change the maturity determination and variance appeal process.

The attorney requests changes in two points of the variance procedure. The attorney suggests that any variance report that is completed by an inspector and committee fieldman, and is submitted to the maturity subcommittee and appeal committee, should be made available to the producer or handler who is requesting the variance. Also, the producer or handler requesting the variance should be able to present the producer's or handler's views to all members of the two committees, not only to the chairmen of the committees as implied in the interim final rule. It is determined that these changes have merit and this final rule modifies the interim final rule accordingly.

The attorney also suggests that transcripts of variance meetings be made. The Department considers this proposal expensive and cumbersome because qualified stenographers or court reporters could be financially prohibitive and may not be available on the short notice needed to review a variance request. Because of the perishability of the fruit, it is imperative that decisions on variances be made promptly. Accordingly, the proposed change is denied. Nonetheless, it is important that the committee, maturity subcommittee and appeal committee use all practical means possible to demonstrate that their meetings, whether public or by telephone, are conducted in a fair and open manner.

In a comment, the committee requested that, after the appeal committee has decided on a variance appeal, the Department should notify the producer or handler requesting the variance of the appeal committee's decision. The Department believes that it is more appropriate for the committee to notify industry members of actions taken by the committee and its subcommittees so that such information may be conveyed in a timely manner. Accordingly, the proposed change is denied.

The committee further requests that the appeal committee should establish a prioritized list of knowledgeable persons who would serve in the place of appeal committee members. The Department believes that such preparation for designation of alternates to the appeal committee can be accomplished under current provisions which authorize designees for specified appeal committee members. However, a prioritized list of names of positions does not have to be listed in this rulemaking action. Therefore, no such change to the regulations is necessary.

Minor wording changes are made in paragraph (a)(1)(i) of § 916.356 to clarify that the inpection service does not, on its own, determine what maturity tests are proper for determining the well-maturity of non-listed nectarine varieties.

In view of the foregoing, the Department denies the comments received and the proposed changes suggested by commenters, except as otherwise noted in this final rule. After considering all of the comments received, and based on the reasons that were set forth in the interim final rule and this document, this action adopts, with the changes stated herein, as a final rule, the maturity requirements and variance appeal procedures that were set forth in the interim final rule to assist California nectarine producers and handlers in improving the quality of the nectarines they market.

It is found and determined that this action, as hereinafter set forth, will tend to effectute the declared policy of the Act.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Nectarine handlers and producers are aware of the requirements which have

been in effect since May 27, 1988; (2) with the exception of the minor changes for maturity determinations, the requirements set forth below are the same as currently implemented in the interim final rule; and (3) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 916

Marketing agreement and order, nectarines, California.

For the reasons set forth in the preamble, the following action pertaining to 7 CFR Part 916 is taken:

Note: This rule will appear in the Code of Federal Regulations

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 916 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending § 916.356, which was published in the **Federal Register** (53 FR 19226; May 27, 1988) and corrected in the **Federal Register** (53 FR 22609; June 16, 1988) is adopted as a final rule with the following changes—paragraph (a)(1)(i) introductory text is revised and (a)(1)(iv) is amended by removing the first three sentences and adding four sentence in their place to read as follows:

§ 916.356 Nectarine regulation 14.

(a) * * *

(1) * * *

(i) During the 1988 and subsequent seasons, the Federal or the Federal-State Inspection Service will use the maturity guides listed in Table I in making maturity determinations for the specified varieties. For these varieties, not less than 90 percent of any lot shall meet the color guide established for the variety, and an aggregate area of not less than 90 percent of the fruit surface shall meet the color guide established for the variety, except that for the Fairlane, Tom Grand, and 61–61 varieties of nectarines, not less than an aggregate area of 80 percent of the fruit surface shall meet the color guide established for the variety. For varieties not listed, the Federal or Federal-State Inspection Service will use such tests as deemed to be proper by the Nectarine Administrative Committee and the Federal or Federal-State Inspection Service. A variance for any variety from the application of the maturity guides specified in Table I may be granted during the season to reflect changes in crop, weather, or other conditions that would make the specified guides an inappropriate measure of "well-matured." The maturity determination variance procedure is set forth as follows:

(ii) * * *

(iii) * * *

(iv) If either the fieldman or the inspection representative or both agree that a variance is warranted, the request for the variance and the written views of the fieldman and inspection official shall be forwarded to the maturity subcommittee for review and written determination. A copy of the written report shall be provided to the requester. The fieldman shall notify the requester when the request has been forwarded to the maturity subcommittee and whether the request will be considered at a public or a telephone meeting. The requester may participate in public meetings or telephone meetings any may provide additional information in support of the request to the chairman of the maturity subcommittee prior to a public or telephone meeting. * * *

* * * * *

Dated: March 23, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–7287 Filed 3–24–89; 8:45am]

BILLING CODE 3410–02–M

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7 CFR Part 917

[Docket No. AMS–FV–88–041FR]

Fresh Pears, Plums, and Peaches Grown in California; Relaxation of Size Requirements and Revision of Maturity Regulations for Plums

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule, with maturity requirement modifications, the provisions of an interim final rule which specified maturity requirements and maturity variance procedures for California plums and deceased size requirements for two varieties of plums. These actions are designed to facilitate plum maturity determinations and promote marketing of the crop.

EFFECTIVE DATE: March 27, 1989.

FOR FURTHER INFORMATION CONTACT: G.J. Kelhart, Section Head, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 475–3919.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Marketing Agreement and Order No. 917 (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (REA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 520 handlers of plums, peaches, and nectarines subject to regulation under marketing orders (7 CFR Parts 916 and 917), and there are approximately 2,030 producers of these commodities in the regulated area. The reduction in the number of handlers from that listed in previous documents in this rulemaking proceeding reflects more recent information from the industry. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California plums may be classified as small entities.

Shipments of California plums are regulated by grade, maturity, and size under § 917.460 Plum Regulation 19 (7 CFR 917.460). A proposed rule concerning size and maturity regulations was published in the **Federal Register** on April 8, 1988 (53 FR 11672). The proposed changes were recommended by the Plum Commodity Committee (hereinafter referred to as the committee) and the Department. Numerous comments were received in favor of and opposition to the proposed rule, including a request for an extension of the comment period that was originally scheduled to expire on

April 25, 1988. The Department granted this request on April 21, 1988, and a notice extending the period to May 2, 1988, was published in the **Federal Register** on April 25, 1988 (53 FR 13413).

After reviewing the comments received, changes were made to 917.460 by an interim final rule issued on May 24, 1988, and published in the **Federal Register** and made effective on May 27, 1988 (53 FR 19224). The comments received as a result of the proposal were addressed in the interim final rule. Interested persons were invited to submit written comments concerning the interim final rule. Comments were received from the committee, the Small Business Administration (SBA), and Mr. Brian Leighton, an attorney (hereinafter referred to as the attorney) representing three entities which operate as handlers in the California plum industry.

This final rule is based upon the committee's recommendation, information submitted by the committee, comments received from those supporting and opposing the action, and other available information.

Inspected shipments of California plums for the 1987 season totalled 17,399,500 packages. The fruit was sold primarily in the fresh market. The production value of California plums was about $75,361,000 in 1987. Although this final rule will impose requirements on the handling of plums, exemptions from the inspection and certification requirements as specified in § 917.143 will continue. These exemptions include provisions for the shipment of minimum quantities of the fruit.

The interim final rule adopted the decrease in the variety-specific size requirements for the Sharron's Plum variety of plums to reflect size characteristics of that variety. The interim final rule also removed the Bee Gee Plum variety from the variety-specific size requirements because this variety is no longer produced in commercially significant quantities. Both of these actions reduce the regulatory requirements on handlers without deterring the quality control efforts of the California plum industry.

The Department decided not to implement in the interim final rule tighter size requirements for numerous plum varieties because of the wide divergence of views within the industry on the proposed size increases. In addition, other proposed changes concerning adding four-basket crate equivalents and adding several varieties to the variety-specific size requirements were not adopted in the interim final rule. The Department decided that further analysis and study of plum size requirements were needed. The attorney and the SBA supported this decision. No other comments on the size changes were received.

Accordingly, the Department has decided to adopt the decreases in size requirements implemented by the interim final rule. This action will help assure that fresh plums have the characteristics preferred in the market place. It also recognizes the interest of California plum producers and handlers in maintaining the quality and size of the plums they market.

Prior to 1980, plums were required to meet the maturity requirements of U.S. Grade No. 1. Under U.S. Grade No. 1, a plum was considered mature when it reached a condition that would ensure a proper completion of the ripening process. Plums picked and shipped at that minimum level of maturity often were not well received in the marketplace. Such fruit sometimes was too hard and lacked the flavor found in more mature fruit. Because such fruit was not received well by consumers early in the season, repeat purchases of later season plums were reduced. The committee met in May of 1980 and recommended that the Department provide for a higher maturity standard. Regulations were published in the **Federal Register** on May 20, 1980 (45 FR 33596). The higher maturity standard (well-matured) was, and continues to be, based on a system of color guides and other tests which were developed by officials of the Federal-State Inspection Service and ratified by the committee.

Since that time the committee and the plum maturity subcommittee and the Federal or Federal-State Inspection Service (hereinafter referred to as the inspection service) have worked together to ensure that the maturity requirements are properly applied to the many varieties of plums. In this regard, the committee and the inspection service meet every Fall to establish which color chip guides and other tests will be used to determine the maturity of each variety of plum in the next production year. Producers and handlers are invited to attend these meetings and are afforded an opportunity to voice opinions regarding which color chip guides and other maturity tests will be used. A representative of the Department attends these meetings to ensure that the committee complies with the provisions of the marketing order. The Department's representative prepares a report, summarizing and analyzing the actions taken. This report, along with the minutes of the meeting and other pertinent information, is sent to Department headquarters. The committee's decisions are analyzed and may be disapproved by the Secretary. The requirements are published in the committee's handler bulletins and were specified in the interim final rule published in the **Federal Register** on May 27, 1988 (53 FR 19224).

To ensure that the higher maturity requirements have been applied fairly and are consistent with program objectives, a procedure has been implemented by which a handler or producer can obtain a variance from a particular color chip requirement or other maturity test. This procedure is described in detail in the interim final rule published in the **Federal Register** on May 27, 1988 (53 FR 19224). Under this procedure, the maturity subcommittee is given the authority to grant a variance if the fruit is well-matured but does not met the designated color chip requirement or other maturity test. These procedures are also published in the committee's handler bulletins.

To facilitate maturity determinations, "well-matured" was established by the interim final rule in § 917.460(a) as a condition more advanced than mature, but not over-ripe or shriveled. In addition, § 917.460 of the interim final rule established specific skin color requirements and tolerances for determining the well-matured condition of 96 specific plum varieties. Annual changes in these requirements will be made based upon recommendations of the committee in consultation with the inspection service and interested producers and handlers. Such annual changes must also be approved by the Department.

Opposition comments concerning the maturity requirements and variance procedures in the interim final rule were received from the attorney and the SBA. For a variety of reasons, the attorney objected to the designation of "well-matured" as a requirement of plum condition prior to picking. The attorney asserts that while a well-matured standard has been a requirement for fresh California plums since 1980, the term has not been published in the **Federal Register** or officially recognized by the inspection service. However, in our view the higher maturity requirements as applied since 1980 were authorized under the marketing order. Such requirements were specified in the interim final rule in Plum Regulation 19 on May 27, 1988 (53 FR 19224). The interim final rule was intended to facilitate maturity determinations and to to promote marketing of the crop.

The attorney suggests that a study conducted by Ervin D. Thuerk, as described in the interim final rule, fails to address issues of consumer satisfaction or dissatisfaction with U.S.

No. 1 mature fruit. According to the attorney, some varieties of plums simply taste better than other varieties whether they are at the well-matured stage or not. Thus, the attorney contends that consumers' opinions of which fruit has better taste does not necessarily mean that higher maturity is desired by consumers. However, no evidence was submitted that substantiates this claim. The committee contends that consumer complaints are directly related to a lack of maturity of marketed fruit.

The attorney states that many color chips used in 1980 were much greener in color than those used now. He concludes that the fruit by today's standards must be more mature than fruit in 1980 with the result that there is less time for the fruit to be sent to the market and sold before spoiling.

The attorney contends that the color chip requirements are not uniformly indicative of the same degree of maturity for all varieties. Thus, he contends, it is possible for some varieties of plums to pass the maturity inspection based on an interior inspection of taste and other tests while the skin color fails to indicate a well-matured condition for that variety. Therefore, such varieties are being discriminated against because they must stay on the tree until the skin meets color requirements. According to the attorney, such varieties would have a decreased shelf-life or no shelf-life at all. The attorney goes on to state that if a variety, after reaching a well-matured condition based on taste or other tests, requires a one day delay to reach the well-matured condition based on skin color, it is discriminatory to have specific color requirements for other varieties that would require a delay of six or seven days. The attorney points out that a plum variety which is well-matured, but must wait for color chip approval, can become unmarketable in two days. Thus, he contends that shipment of fruit at the well-matured level based on color can place an undue hardship on some plums, paticularly those shipped to distant markets. The attorney suggests that changes in color chips should be made to lessen the chances of the fruit arriving at market destinations overripe. Currently, the same maturity requirement for each variety applies, regardless of the destination of the fruit.

The committee has made a concerted effort to establish color standards for all varieties of plums at minimum levels of well-maturity for each variety. There are more chips in use today to account for the subtle color differences between varieties. It is in the interest of the industry as a whole to have each of its varieties with as wide a marketing window as possible.

The committee also believes that it is important that plums are well-matured when they reach the marketplace. It has established a color standard for each variety which would leave as much time as possible to transport that variety to the marketplace, recognizing that modern transportation systems allow most commodities to be within three to five days of most markets, thus allowing a reasonable shelf-life. Good business practice would seem to dictate that fruit with more advanced maturity should be shipped to less distant markets when spoilage is a concern. It is important to note that the arrival quality of fruit can suffer when the fruit is improperly handled or shipped at higher or lower than desired temperatures.

The attorney contends that inspectors should use the color chips and other tests as guides but not as the determining factor in the inspection. He contends that the well-matured standard is too broad and ambiguous because it permits the committee to adopt various color requirements and maturity tests during the production color requirements and maturity tests during the production season which could delay picking in any particular orchard. He asserts that if a particular orchard fails to meet the predetermined color chip requirement and also fails to be approved by the maturity subcommittee and the variance appeal committee, then that orchard may be completely lost, resulting in an undue and unfair financial loss to the producer. This action provides that the inspection service will use the maturity guides as listed in the regulations in making maturity determinations for specified varieties. For varieties not listed in the regulations, the inspection service will use such tests as deemed to be proper by the Plum Commodity Committee and the inspection service. However, a variance from the maturity guides for any listed variety is authorized pursuant to regulations. Further, the time periods involved in the various process are intended to resolve the appeal in as short a time as possible.

The attorney contends that since 1980 the inspection service and the committee have not consistently applied color chip requirements or other maturity standards to all producers and handlers. His comment, and the comment received from the SBA, contend that the committee should not be in a position to establish color chip requirements that must be met by competitors of committee members. Likewise, members of the maturity subcommittee and the appeal committee should not be allowed to make variance decisions that affect their competitors. Both commenters believe this procedure raises the possibility of conflict of interest. The attorney contends that this procedure has led to inconsistent and sometimes unfair application of maturity standards. He suggests that the well-matured requirement, as implemented by the committee, has been used for volume control purposes and that the Department has not conducted proper oversight of the committee and the maturity subcommittee.

The history of the maturity determination process for plums over the last eight years has indicated that the procedures have worked well. The Department disputes the contention that the well-matured requirements have been used for volume control purposes. On the contrary, the purpose of this change is to promote marketing of the crop by assisting California plum producers and handlers in improving the quality of the plums they market. The implementation of color standards for each variety, or such other maturity tests as determined to be proper, are within the scope of the committee. The actions of the committee with regard to maturity determinations are not unlike any other committee duties or actions authorized pursuant to the marketing order. Accordingly, the maturity determination process is not flawed by the participation of committee members. Further, with regard to Department oversight of the committee and the maturity subcommittee, the maturity determination process is subject to appropriate oversight, as are other marketing order activities. In our view, the maturity determination process has provided over the years fair and equitable treatment to producers and handlers.

The attorney and the SBA believe that decisions regarding maturity requirements should be assigned solely to the inspection service, and that the committee should be limited to an advisory role. This would allow the inspection service to determine which specific color chip or maturity test should be used for each variety. According to both commenters, the inspection service should also have the sole responsibility of granting variances. An alternate proposal by the attorney would give individual producers of a specific variety the responsibility to establish the color chip requirements for that variety.

Regarding these proposals, it should be noted that in the April 18, 1988,

proposal, the inspection service would have been responsible for variances during the season and for changes between seasons. One purpose of the proposed change was to relieve the maturity subcommittee of the burden of making variances during the season because committee members are dispersed over a wide geographic area and have daily responsibilities with regard to their own businesses. However, as discussed in the May 27, 1988, interim final rule and based upon comments received, it was determined that the procedures for handling variances should be similar to those that were already then in use. In addition, an appeal procedure was established. It was concluded that the inspection service and industry officials designated to make variance decisions have the necessary background and expertise in fruit maturity and knowledge about growing conditions in the production area. The Department believes the attorney's alternative proposal—that producers of a specific variety establish their own well-maturity standards—would not provide a uniform set of well-maturity requirements and could raise questions as to fairness and equitability. Based upon all information available, including comments received regarding the proposal, the procedures contained in this final rule best provide for a fair and equitable process for maturity determinations. Accordingly, the commenter's proposed changes are denied.

The attorney and the SBA commented on the composition of the appeal committee. Both commenters believe that the appeal committee should be comprised only of inspection service personnel to ensure that the committee's decisions are fair and knowledgeable. The attorney and the SBA contend that such decisions are impossible under the current membership consisting of one inspection service official and the chairmen of the nectarine and the peach committees, or their designees. The attorney contends that the two chairmen may not have sufficient knowledge of plum maturity characteristics to make informed decisions. The attorney and the SBA commenter also suggest that the appeal committee decisions could be biased against a plum variance because plums are market competitors of nectarines and peaches. The commenters concluded that it could be in the best interest of the two chairmen to keep plums off the market.

Both the committee and the California Department of Food and Agriculture (CDFA), under which the Federally licensed State inspectors serve, submitted comments to the proposed rule stating that full responsibility to allow or disallow variances should not be placed on the inspection service. Moreover, in issuing the interim final rule, the Department concluded that an appeal committee would represent a further level of review or determination of maturity subcommittee decisions. Further, the decision in the interim final rule establishing the membership on the appeal committee was based on consideration that it was important that the members of the appeal committee be different from those serving on the maturity subcommittee, and that the appeal committee members be knowledgeable about crop and maturity conditions in the industry. The composition of the California tree fruit industry is such that many handlers and producers are involved with more than just one tree fruit. The sharp distinctions in California tree fruit industry, as suggested by the commenters, do not exist. Accordingly, this proposed change is denied.

According to recent information, the variance process worked well during the 1988 season. Since implementation of the interim final rule, the Department has not been informed of any variance problems such as those outlined by the attorney and SBA. Thus, there is no reason to substantially change the maturity determination and variance appeal process.

The attorney requests changes on two points in the variance procedure. The attorney suggests that any variance report that is completed by an inspector and a committee fieldman, and is submitted to the maturity subcommittee and appeal committee, should be made available to the producer or handler who is requesting the variance. Also, the producer or handler requesting the variance should be able to present that producer's or handler's views to all members of the two committees, not only to the chairmen of the committees as implied in the interim final rule. It is determined that these changes have merit and this final rule modifies the interim final rule accordingly.

The attorney also suggests that transcripts of variance meetings be made. The Department considers this proposal expensive and cumbersome because qualified stenographers or court reporters could be financially prohibitive and may not be available on the short notice needed to review a variance request. Because of the perishability of the fruit, it is imperative that decisions on variances be made promptly. Accordingly, the proposed change is denied. Nonetheless, it is important that the committee, maturity subcommittee and appeal committee use all practical means possible to demonstrate that their meetings, whether public or by telephone, are conducted in a fair and open manner.

In a comment, the committee requested that, after the appeal committee has decided on a variance appeal, the Department should notify the producer or handler requesting the variance of the appeal committee's decision. The Department believes that it is more appropriate for the committee to notify industry members of actions taken by the committee and its subcommittees so that such information may be conveyed in a timely manner. Accordingly, this proposed change is denied.

The committee further requests that the appeal committee should establish a prioritized list of knowledgeable persons who would serve in place of appeal committee members. The Department believes that such preparation for designation of the alternates to the appeal committee can be accomplished under current provisions which authorize designees for specified appeal committee members. However, a prioritized list of names of positions does not have to be listed in this rulemaking action. Therefore no change to the regulations is necessary.

Minor wording changes are made in paragraph (a)(2) of § 917.460 to clarify that the inspection service does not, on its own, determine what maturity tests are proper for determining the well-maturity of non-listed plum varieties.

No comments were received on the following three provisions of the interim final rule: (1) The basis used in determining the soluble solids average for all fresh prune/plums was changed from a base which requires the use of the 10 least mature appearing fruits to a base which only requires a representative sample of fresh prune/plums in any lot; (2) The soluble solids percentage requirement for fresh French Prunes was changed from 19 percent to 18 percent; and (3) The "well-matured" guide for the Roysum variety of plums was changed by adding green streaking as a maturity indicator to make the guide more accurate. The action finalizes these three provisions as discussed in the interim final rule.

In view of the foregoing, the Department denies the comments received and the proposed changes suggested by commenters except as otherwise noted in the final rule. After considering all of the comments received, and based on the reasons that were set forth in the interim final rule

and this document, this action adopts, with the changes stated herein, as a final rule, the maturity requirements and variance appeal procedures that were forth in the interim final rule to assist California plum producers and handlers in improving the quality of the plums they market.

It is found and determined that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Plum handlers and producers are aware of these requirements, which have been in effect since May 27, 1988; (2) with the exception of the minor changes for maturity determinations, the requirements set forth below are the same as currently implemented in the interim final rule; and (3) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 917

Marketing agreement and order, plums, California.

For the reasons set forth in the preamble, the following action pertaining to 7 CFR Part 917 is taken:

Note.—This rule will appear in the Code of Federal Regulations.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending § 917.460, which was published in the **Federal Register** (53 FR 19224, May 27, 1988) is adopted as a final rule with the following changes—paragraph (a)(2) is revised and (a)(3)(iii) is amended by removing the first three sentences and adding four sentences in their place to read as follows:

§ 917.460 Plum regulation 19.

(a) * * *

(2) During the 1988 and subsequent seasons, the Federal or the Federal-State Inspection Service will use the maturity guides listed in Table I in making maturity determinations for the specified varieties. For these varieties, not less than 90 percent of any lot shall meet the surface color, flesh color or "spring" requirements established for the variety or not less than 90 percent of any lot shall meet the ground color standard established for the variety except that for the Ebony variety, an additional lot tolerance of 17 percent shall be permitted for fruit not meeting the "spring" requirement. For varieties not listed, the Federal or the Federal-State Inspection Service will use such tests as deemed to be proper by the Plum Commodity Committee and the Federal or Federal-State Inspection Service.

(3) * * *

(iii) If either the fieldman or the inspection representative or both agree that a variance is warranted, the request for the variance and the written views of the fieldman and inspection official shall be forwarded to the maturity subcommittee for review and written determination. A copy of the written report shall be provided to the requester. The fieldman shall notify the requester when the request has been forwarded to the maturity subcommittee and whether the request will be considered at a public or a telephone meeting. The requester may participate in public meetings or telephone meetings and may provide additional information in support of the request to the chairman of the maturity subcommittee prior to a public or telephone meeting.* * *

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Dated: March 23, 1989.

Robert C. Keeney,

Duputy Director, Fruit and Vegetable Division.

[FR Doc. 89–7285 Filed 3–24–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 917

[Docket No. AMS–FV–88–055W]

Fresh Pears, Plums, and Peaches Grown in California; Amendments to the Size Requirements and Revision of the Maturity Regulations for Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule, with size and maturity requirement modifications, the provisions of an interim final rule which changed size regulations and specified maturity requirements and maturity variance procedures for California peaches. The coverage of the variety-specific size requirements are changed by removing two peach varieties, no longer produced in commercially significant quantities, from the variety-specific size requirement list. Also, size requirements are modified for varieties of peaches not subject to the variety-specific size requirements which are shipped November 1, through July 2. This action is intended to facilitate maturity determinations and to promote the marketing of the crop.

EFFECTIVE DATE: March 27, 1989.

FOR FURTHER INFORMATION CONTACT: G.J. Kelhart, Section Head, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 475–3919.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Marketing Agreement and Order No. 917 (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 520 handlers of peaches, plums and nectarines subject to regulation under marketing orders (7 CFR Parts 916 and 917) and there are approximately 2,030 producers of these commodities in the regulated area. The reduction in the number of handlers from that listed in previous documents in this rulemaking proceeding reflects more recent information from the industry. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000,

and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California peaches may be classified as small entities.

Shipments of California peaches are regulated by grade, maturity, and size under § 917.459 Peach Regulation 14 (7 CFR 917.459). A proposed rule concerning size and maturity regulations was published in the **Federal Register** on April 18, 1988 (53 FR 12694). The proposed changes were recommended by the Peach Commodity Committee (hereinafter referred to as the committee) and the Department. Numerous comments were received in favor of and opposition to the proposed rule.

After reviewing the comments to the proposal, changes were made to § 917.459 by an interim final rule issued May 24, 1988, and published in the **Federal Register** and made effective on May 27, 1988 (53 FR 19234). The comments received as a result of the proposal were addressed in the interim final rule. Interested persons were invited to submit written comments concerning the interim final rule. Comments were received from the committee, the Small Business Administration (SBA), and Mr. Brian Leighton, an attorney (hereinafter referred to as the attorney) representing three entities which operate as handlers in the California peach industry.

This final rule is based upon the committee's recommendation, information submitted by the committee, comments received from those supporting and opposing the action, and other available information.

Inspected shipments of California peaches for the 1987 season totalled 13,854,000 packages. The fruit was sold primarily in the fresh market. In 1987, the production value of California freestone peaches (fresh and processed) and cling stone peaches was about $68,252,000 and $95,612,000 respectively. Although this final rule will impose requirements on the handling of peaches, exemptions from the inspection and certification requirements as specified in § 917.143, will continue. These exemptions include provisions for the shipment of minimum quantities of the fruit.

The interim final rule implemented the size requirement changes to recognize the interest of California peach growers and handlers in providing fruit preferred in the marketplace. To implement the recommendation, § 917.459 paragraph (a)(5) was revised to remove from the variety-specific size requirements Summerset and Windsor peach varieties which were no longer produced in commercially significant quantities.

Also, to foster consistency of size regulations throughout the year, the varieties of peaches not subject to the variety-specific size requirements for fruit packed in No. 12 B standard fruit (peach) boxes were added to paragraph (b) of § 917.459 for shipment during the period November 1 through July 2. The requirements specified were the same as those specified for shipments during the period July 3 to October 31. With this change, such peaches have to be of a size that will pack in accordance with the requirements of standard pack (not more than 65 peaches to the box).

The only comment opposing the changes in size requirements was received from the attorney. He requested that his comments on the size requirements on the proposed rule for plums (7 CFR 917.460; 53 FR 11672, April 8, 1988) be incorporated by reference on this rule. The comments, including the attorney's, concerning the proposed changes to the plum size regulations were addressed in the May 27, 1988, interim final rule (53 FR 19218). The attorney believes that the factors noted in the Department's decision to not approve a proposed increase in plum size requirements, as discussed in the May 27, 1988, interim final rule, should apply equally to changes in the required sizes of peaches.

The Department disagrees with such a comparison and notes that the only similarity between the two actions is that both are concerned with size requirements. There was strong disagreement in the plum industry on the need for size increases; on whether or not profitable markets for the plums would be eliminated; on whether shipments of some varieties would be disproportionately burdened by the higher size requirements; and on whether the impact of the size changes would be harsher on the early growing areas than on those in the later growing areas. Because of the wide divergence of views on these issues, the Department decided not to adopt the plum committee's size recommendations. Rather, the Department decided that further analysis and study of the plum size requirements was needed.

In the case of peaches, however, there is a general consensus throughout the industry that the relatively minor size requirement changes for these varieties not produced in commercially significant quantities would be beneficial to the industry as a whole in providing peaches of the sizes preferred. Information of the 1988 season did not indicate otherwise.

In its comment the committee requested a modification to increase the size requirements for varieties of peaches not subject to the variety-specific size requirements which are shipped November 1, through December 31. These so-called "unlisted varieties" are shipped in combined quantities significant enough to warrant some size requirement coverage even though, individually, each variety is not considered commercially significant. Currently, the minimum size requirement for un-listed varieties of peaches shipped during the period July 3 to October 31 is size "80." For unlisted varieties shipped during the period November 1 through July 2, the minimum size requirement is size "96". The requested modification would have extended for unlisted varieties to be a minimum size "80" to cover July 3 through December 31. Likewise, the effective period of the minimum size "96" requirement would have been shortened to the period January 1 through July 2. The requested modification is based on the committee's concern about the possible development of new late-season peach varieties and the need for tighter requirements during the months of November and December. The Department has determined that this change is not needed at this time because the recommendation did not demonstrate that a present problem exists with late season varieties.

Also, the committee comments that the "Prima Fire" variety of peaches, which is listed in the maturity regulations, is also listed in the size and maturity regulations under its lesser known varietal name of "Firecrest". The committee requests that the commonly used name "Prima Fire" be used in all cases to prevent confusion in the industry. To accomplish this, the Firecrest varietal name in the maturity guide in Table I of § 917.459(a)(1)(i) is deleted, and the varietal name of the Prima Fire is inserted in place of Firecrest in § 917.459(a)(4). Accordingly, except for the previously discussed changes, the Department accepts the size requirement changes as specified in the interim final rule.

Prior to 1980, peaches were required to meet the maturity requirements of U.S. Grade No. 1. Under U.S. Grade No. 1, a peach was considered mature when it reached a condition that would ensure a proper completion of the ripening process. Peaches picked and shipped at that minimum level of maturity often were not well received in the marketplace. Such fruit sometimes was too hard and lacked the flavor found in

more mature fruit. Because such fruit was not received well by consumers early in the season, repeat purchases of later season peaches were reduced. The committee met in May of 1980 and recommended regulations providing for a higher maturity standard. Regulations were published in the **Federal Register** on May 16, 1980 [45 FR 32310]. The higher maturity standard, (well-matured) was, and continues to be, based on a system of color guides and other tests which were developed by officials of the Federal-State Inspection Service and ratified by the committee.

Since that time the committee and the peach maturity subcommittee and the Federal or Federal-State Inspection Service (hereinafter referred to as the inspection service) have worked together to ensure that the maturity requirements are properly applied to the many varieties of peaches. In this regard, the committee and the inspection service meet every Fall to establish which color chip guides and other tests will be used to determine the maturity of each variety of peach in the next production year. Producers and handlers are invited to attend these meetings and are afforded an opportunity to voice objections or concerns regarding which color chip guides will be used. A representative of the Department attends these meetings to ensure that the committee complies with the provisions of the marketing order. The Department's representative prepares a report summarizing and analyzing the actions taken. This report, along with the minutes of the meeting, and other pertinent information are sent to the Department headquarters. The committee's decisions are analyzed, and may be disapproved by the Secretary. The requirements are published in the committee's handler bulletins and were specified in the interim final rule published in the **Federal Register** on May 27, 1988 (53 FR 19238).

To ensure that the higher maturity requirements have been applied fairly and are consistent with program objectives, a procedure has been implemented pursuant to which a handler or producer can obtain a variance from a particular color chip requirement. This procedure is described in detail in the interim final rule published in the **Federal Register** on May 27, 1988 (53 FR 19238). Under this procedure, the maturity subcommittee is given the authority to grant a variance to a particular color requirement if the fruit is well-matured but does not meet the designated color requirement. These procedures are also published in the committee's handler bulletins.

To facilitate maturity determinations, "well-matured" was established by the interim final rule in § 917.459(a) to mean a condition more advanced than mature, but not over-ripe or shriveled. In addition, § 917.459 of the interim final rule established specific skin color requirements and tolerances for determining the well-matured condition of 89 specific peach varieties. Annual changes in these requirements will be made based on recommendations of the committee in consultation with the inspection service and interested producers and handlers. Such changes must also be approved by the Department.

Opposition comments concerning the maturity requirements and variance procedures in the interim final rule were received from the attorney and the SBA. For a variety of reasons, the attorney objected to the designation of "well-matured" as a requirement of peach condition prior to picking. The attorney asserts that while a well-matured standard has been a requirement for peaches since 1980, the term has not been published in the **Federal Register** or officially recognized by the inspection service. However, in our view the higher maturity requirements as applied since 1980 were authorized under the marketing order. Such requirements were specified in the iterim final rule in Peach Regulation 14 on May 27, 1988, (53 FR 19238). The interim final rule was intended to facilitate maturity determinations and promote the marketing of the crop.

The attorney suggests that a study conducted by Ervin D. Thuerk, as discussed in the interim final rule, fails to address issues of consumer satisfaction or dissatisfaction with U.S. No. 1 mature fruit. According to the attorney, some varieties of peaches simply taste better than other varieties, whether they are at the well-matured stage or not. Thus, the attorney contends that consumers' opinons about which fruit has better taste does not necessarily mean that higher maturity is desired by consumers. However, no evidence was submitted that substantiated this claim. The committee contends that consumer complaints are directly related to a lack of maturity of marketed fruit.

The attorney states that many color chips used in 1980 were much greener in color than those used now. He concludes the fruit by today's standards must be more mature than fruit in 1980, with the result that there is less time for the fruit to be sent to the market and sold before spoiling.

The attorney contends that the color chip requirements are not uniformly indicative of the same degree of maturity for all varieties and that is possible for some varieties of peaches to pass the maturity inspection based on an interior inspection of taste and other tests while the skin color fails to indicate a well-matured condition. Thus, some varieties are being discriminated against because they must stay on the tree until the skin meets color requirements, causing a decreased shelf-life or no shelf-life at all. The attorney states that if a variety, after reaching well-maturity based on taste and or other tests, requires a one day delay to reach the well-matured stage based on skin color, it is discriminatory to have a specific color requirement for another variety that would require a delay of six or seven days. In addition, he points out that a peach variety which is well-matured, but must wait for color chip approval, can become unmarketable in two days. Thus, he contends that shipment of fruit at the required-well-matured level based on color can place an undue hardship on some peaches, particularly those shipped to distant markets. The attorney suggests that changes in color chips should be made to lessen the chances of the fruit arriving at market destinations overripe. Currently, the same maturity requirement for each variety applies, regardless of the destination of the fruit.

The committee has made a concerted effort to set the color standards for all varities of peaches at minimum levels of well-maturity for each variety. There are more chips in use today to account for the subtle color differences between varities. It is in the interest of the industry as a whole to provide each of its varieties with as wide a marketing window as possible.

The committee believes it is very important that peaches are well-matured when they reach the marketplace. It is the committee's intention to establish a color standard for each variety which would leave as much time as possible to get that variety to the marketplace recognizing that modern transportation systems allow most commodities to be within three to five days of most markets, thus allowing a reasonable shelf-like. Good business practice would seem to dictate that fruit with more advanced maturity should be shipped to less distant markets when spoilage is a concern. Also, it is important to note that the arrival quality of fruit can suffer if the fruit is improperly handled or is shipped at higher or lower than desired temperatures.

The attorney contends that inspectors should use the color chips and other tests as guides but not as the determining factor in the inspection. He contends that the well-matured standard

is too broad and ambiguous because it permits the committee to adopt various color requirements and maturity tests during the production season which could delay picking in any particular orchard. He asserts that if a particular variety fails to meet its predetermined color chip requirement and also fails to be approved by the maturity subcommitte and the variance appeal committee, that orchard may be completely lost, resulting in an undue and unfair financial loss to the producer. This action provides that the inspection service will use the maturity guides as listed in the regulations in making maturity determinations for specified varieties. For varieties not listed in the regulations, the inspection service will use such tests as deemed to be proper by the Peach Commodity Committee and the inspection service. However, a variance from the maturity guides for any listed variety is authorized pursuant to regulations. Further, the time periods involved in the variance process are intended to resolve the appeal in as short a time as possible.

The attorney suggests that since 1980 the inspection service and the committee have not consistently applied color chip requirements or other maturity standards to all producers and handlers. His comment, and the comment received from the SBA, contend that the committee should not be in a position to establish color chip requirements that must be met by competitors of committee members. Likewise, the maturity subcommittee and the appeal committee members should not be allowed to make variance decisions that affect their competitors. Both commenters believe this procedure raises the possibility of conflict of interest. The attorney contends that this procedure has led to inconsistent and sometimes unfair application of maturity standards. He suggests that the well-matured requirement, as implemented by the committee, has been used for volume control purposes and contends that the Department has not conducted proper oversight of the committee and the maturity subcommittee.

The history of the maturity determination process for peaches over the last eight years has indicated that the procedures have worked well. The Department disputes the contention that the well-matured requirements have been used for volume control purposes. On the contrary, the purpose of this change is to promote marketing of the crop by assisting California peach producers and handlers in improving the quality of the peaches they market. The implementation of color standards for each variety, or such other maturity tests as determined to be proper, are within the scope of the marketing order. The actions of the committee with regard to maturity determinations are not unlike any other committee duties or actions authorized pursuant to the marketing order. Accordingly, the maturity determination process is not flawed by the participation of committee members. Further, with regard to Department oversight of the committee and the maturity subcommittee, the maturity determination process is subject to appropriate oversight, as are other marketing order activities. In our view, the maturity determination process has provided over the years fair and equitable treatment of producers and handlers.

The attorney and the SBA believe that decisions regarding maturity requirements should be assigned solely to the inspection service and that the committee should be limited to an advisory role. This would allow the inspection service to determine which specific color chip or maturity test should be used for each variety. According to the commenters, the inspection service should also have the sole responsibility of granting variances. An alternate proposal by the attorney would give individual producers of a specific variety the responsibility to establish the color chip requirements for that variety.

Regarding these proposals, it should be noted that in the April 18, 1988, proposal, the inspection service would have been responsible for variances during a season and for changes between seasons. One purpose of the proposed change was to relieve the maturity subcommittee of the burden of making variances during the season because committee members are dispersed over a wide geographic area and have daily responsibilities with regard to their businesses. However, as discussed in the May 27, 1988, interim final rule and based upon comments received, it was determined that the procedures for handling variances should be similar to those that were already then in use. In addition, an appeal procedure was established. It was concluded that the inspection service and industry officials designated to make variance decisions have the necessary background and expertise in fruit maturity and knowledge about growing conditions in the production area. The Department believes the attorney's alternative proposal—that producers of a specific variety establish their own well-maturity standards—would not provide a uniform set of well-maturity requirements and would raise questions as to fairness and equitability. Based upon all information available, including comments received regarding the proposal, the procedures contained in this final rule best provides for a fair and equitable process for maturity determinations. Accordingly, the commenter's proposed changes are denied.

The attorney and the SBA commented on the composition of the appeal committee. Both commenters believe that the appeal committee should be comprised only of inspection service personnel to ensure that the committee's decisions are fair and knowledgeable. The attorney and the SBA contend that such decisions are impossible with the current membership consisting of one inspection service official and the chairmen of the plum and the nectarine committees, or their designees. The attorney contends that the two chairmen may not have sufficient knowledge of peach maturity characteristics to make informed decisions. The attorney and the SBA commenter also suggest that the appeal committee decisions could be biased against a peach variance because peaches are market competitors of plums and nectarines. The commenters concluded that it could be in the best interest of the two chairmen to keep peaches off the market.

Both the California Department of Food and Agriculture (CDFA), under which the Federally licensed State inspectors serve and the committee submitted comments to the proposed rule stating that full responsibility to allow or disallow variances should not be placed on the inspection service. Moreover, in issuing the interim final rule, the Department concluded that the appeal committee would represent a further level of review or determination of the maturity subcommittee's decisions. Further, the decision in the interim final rule establishing the membership on the appeal committee was based upon consideration that it was important that the members of the appeal committee be different from those serving on the maturity subcommittee and that the appeal committee members be knowledgeable about crop and maturity conditions in the industry. The composition of the California tree fruit industry is such that many handlers and producers are involved with more than just one tree fruit. The sharp distinctions in the California tree fruit industry, as suggested by the commenters, do not exist. Accordingly, this proposed change is denied.

According to recent information, the variance process worked well during the 1988 season. Since implementation of the interim final rule the Department has not been informed of any variance problems such as those outlined by the attorney and SBA. Thus, there is no reason to change substantially the maturity determination and variance appeal process.

The attorney requests changes on two points in the variance procedure. The attorney suggests that any variance report that is completed by the inspector and the committee fieldman, and submitted to the maturity subcommittee and appeal committee, should be made available to the producer or handler who is requesting the variance. Also, the producer or handler requesting a variance should be able to present that producer's or handler's views to all members of the two committees, not only to the chairmen of the committees as implied in the interim final rule. It is determined that these changes have merit and this final rule modifies the interim final rule accordingly.

The attorney also suggests that transcripts of variance meetings be made. The Department considers this proposal expensive and cumbersome because qualified stenographers or court reporters could be financially prohibitive and may not be available on the short notice needed to review a variance request. Because of the perishability of the fruit, it is imperative that decisions on variances be made promptly. Accordingly, the proposed change is denied. Nonetheless, it is important that the committee, maturity subcommittee and appeal committee use all practical means possible to demonstrate that their meetings, whether public or by telephone, are conducted in a fair and open manner.

In a comment the committee requested that, after the appeal committee has decided on a variance appeal, the Department should notify the producer or handler requesting the variance of the appeal committee's decision. The Department believes it is more appropriate for the committee to notify industry members of actions taken by the committee and its subcommittees so that such information may be conveyed in a timely manner. Accordingly, the proposed change is denied.

The committee further requests that the appeal committee should establish a prioritized list of knowledgeable persons who could serve in the place of appeal committee members. The Department believes that such preparations for designation of alternates to the appeal committee can be accomplished under current provisions which authorize designees for specified appeal committee members. However, a prioritized list of names or positions does not have to be published in this rulemaking action. Therefore, no such change to the regulation is necessary.

Minor wording changes are made in paragraph (a)(1)(i) of § 917.459 to clarify that the inspection service does not, on its own, determine what maturity tests are proper for determining the well-maturity of non-listed peach varieties.

In view of the foregoing, the Department denies the comments received and the proposed changes suggested by commenters except as otherwise noted in this final rule. After considering all of the comments received, and based on the reasons that were set forth in the interim final rule and this document, this action adopts, with the change as stated herein, as a final rule, the maturity requirements and variance appeal procedures that were set forth in the interim final rule to assist California peach growers and handlers in improving the quality of the peaches they market.

It is found and determined that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) peach handlers and producers are aware of these requirements which have been in effect since May 27, 1988; (2) with the exception of the minor changes for size and maturity determinations, the requirements set forth below are the same as currently implemented in the interim final rule; and (3) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 917

Marketing agreement and order, peaches, California.

For the reasons set forth in the preamble, 7 CFR Part 917 is amended as follows:

Note.—This rule will appear in the Code of Federal Regulations.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending § 917.459, which was published in the **Federal Register** (53 FR 19234, May 27, 1988), is adopted as final rule with the following changes—paragraph (a)(1)(i) is revised and (a)(1)(iv) is amended by removing the first three sentences and adding four sentences in their place to read as follows:

§ 917.459 Peach Regulation 14.

(a) * * *

(1) * * *

(i) During the 1988 and subsequent seasons, the Federal or Federal-State Inspection Service will use the maturity guides listed in Table I in making maturity determinations for the specified varieties. For these varieties, not less than 90 percent of any lot shall meet the color guide established for the variety, and an aggregate area of not less than 90 percent of the fruit surface shall meet the color guide established for the variety. For varieties not listed, the Federal or Federal-State Inspection Service will use such tests as deemed to be proper by the Peach Commodity Committee and the Federal or Federal-State Inspection Service. A variance for any variety from the application of the maturity guides specified in Table I may be granted during the season to reflect changes in crop, weather, or other conditions that would make the specified guides an inappropriate measure of "well-matured." The maturity determination variance procedure is set forth as follows:

* * * * *

(iv) If either the fieldman or the inspection representative or both agree that a variance is warranted, the request for the variance and the written views of the fieldman and inspection official shall be forwarded to the maturity subcommittee for review and written determination. A copy of the written report shall be provided to the requester. The fieldman shall notify the requester when the request has been forwarded to the maturity subcommittee and whether the request will be considered at a public or a telephone meeting. The requester may participate in public meetings or telephone meetings and may provide additional information in support of the request to the chairman of

the maturity subcommittee prior to a public or telephone meeting.* * *

* * * * *

3. Section 917.459(a) is corrected by removing the entry for "Firecrest" from Table I.

4. Section 917.459(a)(4) is corrected by removing the word "Firecrest" from the first sentence and adding the word "Prima Fire" in alphabetical order.

Dated: March 23, 1989.

Robert C. Kenney,

Director, Fruit and Vegetable Division.

[FR Doc. 89-7286 Filed 3-24-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 87F-0294]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyvinylcyclohexane as a clarifying agent for polypropylene and propylene containing olefin copolymers intended for use in contact with food. This action is in response to a petition filed by Sumitomo Chemical Co., Ltd.

DATES: Effective March 27, 1989; written objections and requests for a hearing by April 26, 1989.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 7, 1987 (52 FR 37525), FDA announced that a food additive petition (FAP 7B4032) had been filed by Sumitomo Chemical Co., Ltd., 7-9 Nihonbashi, 2-Chome, Chuo-ku, Tokyo, Japan, proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for the safe use of polyvinylcyclohexane as a clarifying agent in polypropylene complying with § 177.1520(c), item 1.1, and olefin copolymers complying with § 177.1520(c), items 3.1 and 3.2, for use in contact with food.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the food additive is safe, and that the food additive regulations should be amended in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295), rather than in § 177.1520 as proposed in the filing notice, because § 178.3295 is specifically for clarifying agents used for polymers, the use requested by the petitioner.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before April 26, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right of a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall consititute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.3295 is amended in the table by alphabetically adding a new entry under the headings "Substances and "Limitations" to read as follows:

§ 178.3295 Clarifying agents for polymers.

* * * * *

Substances	Limitations
* *	* * * * * *
Polyvinylcyclohexane (CAS Reg. No. 25498-06-0).	For use only as a clarifying agent for polypropylene complying with § 177.1520(c) of this chapter, item 1.1., and in propylene containing copolymers complying with § 117.1520(c) of this chapter, items 3.1 and 3.2, at a level not exceeding 0.1 percent by weight of the polyolefin.
* *	* * * * * *

Dated: March 17, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-7150 Filed 3-24-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 840 and 841

[Docket No. R-89-1433; FR-2581]

Supportive Housing Demonstration Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Technical amendments to final rule.

SUMMARY: The Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988) (Amendments Act) made several changes to the Supportive Housing Demonstration Program. As required by section 485 of the Amendments Act, HUD published a Notice on January 9, 1989 (54 FR 736), for immediate effect, describing the changes, and invited public comments for consideration in amending the final rule within 12 months of enactment. This publication codifies the changes to the Supportive Housing final rule, which was published on June 24, 1988 (53 FR 23898) and codified at 24 CFR Parts 840 and 841. These changes to the rule will be in effect only until HUD publishes the amended final rule within 12 months of enactment of the Amendments Act, as required by section 485. The sole purpose of this rule is to codify the changes in the Supportive Housing program required to be implemented by the Amendments Act, so that participants in the program will not find it necessary to consult two separate documents (HUD's existing final rule published on June 24, 1988 and the Notice published January 9, 1989) in order to determine what regulatory requirements will govern Fiscal Year 1989 grants.

EFFECTIVE DATE: March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Morris Bourne, Department of Housing and Urban Development, Room 9140, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-1520. Hearing or speech-impaired individuals may call HUD's TDD number (202) 426-0015. (These phone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: This rule contains collection of information requirements that were not contained in the final rule published on June 24, 1988. Revised collection of information requirements were submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 and were approved on under OMB control number 2502-0361. Information on the revised reporting burden is contained in the January 9, 1989 **Federal Register** Notice.

The rule does not constitute a "major rule" as that term is defined in section 1(d) of Executive Order 12291 issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The January 9, 1989 Notice contained information with respect to the amendments and the National Environmental Policy Act of 1969, Executive Orders 12606 (The Family) and 12612 (Federalism), and the Regulatory Flexibility Act. The reader may refer to that document for HUD's analyses under those provisions.

This document was not listed on the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974).

The Catalog of Federal Domestic Assistance program number is 14.178.

List of Subjects

24 CFR Part 840

Grant programs, Housing and community development, Housing, Homeless.

24 CFR Part 841

Grant programs, Housing and community development, Housing, Handicapped, Homeless.

For the reasons stated in the preamble, Parts 840 and 841 of Title 24 of the Code of Federal Regulations are amended as set forth below:

PART 840—[AMENDED]

1. The Table of Contents for Part 840 is amended by adding new sections, to read as follows:

* * * * *

Subpart B—Assistance Provided

* * * * *

840.112 New construction advances.

* * * * *

840.117 Grants for employment assistance programs.

* * * * *

Subpart D—Application and Selection Process

* * * * *

840.220 Environmental review by applicants.

* * * * *

Subpart E—Program Requirements

* * * * *

840.314 Flood insurance.

* * * * *

Subpart F—Administration

* * * * *

840.405 Site change.

2. The authority citation for Part 840 is revised to read as follows:

Authority: Section 426(a), Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11386(a)); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

3. Section 840.5 is amended by revising the paragraphs defining "Project" and "Transitional housing" to read as follows:

§ 840.5 Definitions.

* * * * *

Project means one or more existing structures or incomplete structures, or parts of one or more existing structures or incomplete structures.

* * * * *

Transitional housing means a project assisted under this part:

(a) That provides housing and supportive services to homeless persons; and

(b) That has as its purpose facilitating the movement of homeless individuals to independent living within 24 months, or within a longer period determined by HUD as necessary to facilitate the transition.

All or part of the supportive services may be provided directly by the recipient or by arrangement with public or private service providers. Transitional housing means housing that is designed to serve the homeless including (but not limited to): deinstitutionalized homeless individuals with mental disabilities, homeless families with children, homeless runaway children, homeless victims of domestic violence, the homeless unemployed, or appropriate combinations of these populations.

* * * * *

4. Section 840.100 is revised to read as follows:

§ 840.100 Types of assistance.

(a) *Assistance available.* Six types of assistance are available for transitional housing: acquisition/rehabilitation advances, new construction advances,

moderate rehabilitation grants, funding for annual operating costs, funding for establishing and operating employment assistance programs, and technical assistance.

(b) *Eligibility for more than one type of assistance.* Applicants may be eligible for one or any combination of the types of assistance, except that HUD will offer technical assistance only in connection with other assistance under this part.

5. Section 840.105 is amended by revising paragraph (a) and by adding paragraphs (d), (e), (f), and the OMB control number, to read as follows:

§ 840.105 Acquisition/rehabilitation advances.

(a) *Use.* HUD will advance sums to recipients to:

(1) Defray the cost of the acquisition, substantial rehabilitation, or acquisition and rehabilitation of existing structures selected by the recipients for use in the provision of transitional housing; or;

(2) Repay any outstanding debt on a loan made to purchase existing structures for use in the provision of transitional housing.

* * * * *

(d) *Increased advances.* In areas determined by HUD to have costs that exceed the statutory limits of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) by at least 75 percent, advances of more than $200,000 but not more than $400,000 may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements with regard to matching funds described in § 840.130 are applicable to such increased advances.

(e) *Repayment of outstanding debt.* An applicant for an acquisition/rehabilitation advance that intends to use the advance to repay an outstanding debt on a loan made to purchase an existing structure, as described in paragraph (a)(2) of this section, must provide the following information and documentation as a part of the application for the advance:

(1) A copy of the contract of sale;

(2) A copy of the loan agreement, mortgage agreement, or deed of trust;

(3) Documentation showing the purpose of the loan;

(4) Documentation of the balance owed on the loan, mortgage, or deed of trust; and

(5) Certification that the structure has not been used as supportive housing before the receipt of assistance.

(f) *Retroactive applicability.* The provision regarding the use of advances to repay an outstanding debt on a loan made to purchase an existing structure, contained in paragraph (a)(2) of this section, is applicable to awards of assistance under this part on or after November 1, 1987.

(Approved by the Office of Management and Budget under OMB Control Number 2502-0361)

6. Section 840.110 is amended by revising paragraph (b)(1)(i) and by adding paragraph (d) to read as follows:

§ 840.110 Moderate rehabilitation grants.

* * * * *

(b) * * *

(1) * * *

(i) $200,000;

* * * * *

(d) *Increased grants.* In areas determined by HUD to have costs that exceed the statutory limits of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) by at least 75 percent, grants of more than $200,000 but not more than $400,000 may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements with regard to matching funds described in § 840.130 are applicable to such increased grants.

7. Part 840, Subpart B, is amended by adding § 840.112 to read as follows:

§ 840.112 New construction advances.

(a) *Use.* HUD will advance sums to recipients to defray the cost of new construction of facilities for use in the provision of transitional housing where HUD finds the following factors:

(1) The project involves the cooperation of a city and a State university;

(2) The land has been donated to the applicant by a State university;

(3) The applicant proposes a transitional housing structure of at least 10,000 square feet; and

(4) The applicant proposes a model transitional housing project with a comprehensive support system, including health services, job counseling, mental health services, and housing assistance and advocacy.

(b) *Amount.* An advance for new construction may not exceed the lesser of:

(1) $200,00; or

(2) 50 percent of the aggregate cost of the new construction (see § 840.130 for a full discussion of the 50 percent matching requirements).

(c) *Increased advances.* In areas determined by HUD to have costs that exceed the statutory limits of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) by at least 75 percent, advances of more than $200,000 but not more than $400,000 may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements with regard to matching funds described in § 840.130 are applicable to such increased advances.

8. Section 840.115 is amended by redesignating paragraph (b) as paragraph (c) and by adding a new paragraph (b) and the OMB control number, to read as follows:

§ 840.115 Funding for annual operating costs.

* * * * *

(b) *Operating costs for incomplete structure.* If an applicant seeks operating cost assistance for projects with incomplete structures, the applicant must provide reasonable assurance of completion of construction within nine months after notification of an award. Reasonable assurance may be satisfied by submission with the application for assistance the following:

(1) Plans and specifications for the proposed structure;

(2) Evidence that construction financing has been obtained; and

(3) A copy of the construction contract for the proposed structure containing the terms and conditions with regard to cost and date of completion.

* * * * *

(Approved by the Office of Management and Budget under OMB Control Number 2502-0361)

9. Part 840, Subpart B, is amended by adding § 840.117 to read as follows:

§ 840.117 Grants for employment assistance programs.

(a) *Use.* HUD will provide grants for up to 50 percent of the cost of establishing and operating an employment assistance program for residents for one year, and for up to 50 percent of the cost of operating an employment assistance program for up to four additional years.

(b) To be eligible for assistance, an employment assistance program must provide for at least the following:

(1) Employment of residents in the operation and maintenance of the transitional housing; and

(2) Where necessary and appropriate, payment of reasonable transportation costs of residents to places of employment outside the transitional housing.

(c) *Commitment of amounts for assistance.* Upon approval of an application for assistance for an employment assistance program, HUD will obligate amounts for the period sought, not to exceed five years. The funding level for the first year will not

exceed the recipient's estimate of the cost of establishing and operating the program for the first year, less the recipient's matching contribution. The funding level for each of the next four years will not exceed the recipient's estimate of the cost of operating the program for the first year, less the recipient's annual matching contribution. Amounts obligated for an employment assistance program grant are subject to the deobligation rules set out in § 840.400.

10. Section 840.120 is revised to read as follows:

§ 840.120 Technical assistance.

Technical assistance will be offered only in connection with an award of funds under §§ 840.105, 840.110, 840.112, 840.115, or 840.117. Technical assistance is offered to recipients through HUD field offices in such matters as the computation of resident rent under § 840.320, compliance with other Federal requirements under § 840.330, the identification of Federal housing assistance resources that may be available to residents upon their departure from transitional housing, and engineering recommendations and other advice on rehabilitation plans and work write-ups. HUD will also facilitate the exchange of information among recipients, and help recipients to learn from the experience of other participants in the program.

§ 840.125 [Amended]

11. Section 840.125 is amended by removing paragraph (d) and redesignating paragraphs (e), (f), and (g) as paragraphs (d), (e), and (f), respectively.

12. Section 840.130 is amended by revising paragraphs (a), (b), and (c)(1), and by adding paragraph (h), to read as follows:

§ 840.130 Matching requirements.

(a) *General.* The recipient must match the funding provided by HUD under this part with at least an equal amount of funds from non-Federal sources.

(b) *Assistance categories.* Recipients must meet this matching requirement for *each* category of assistance received. The most HUD will provide for an acquisition/rehabilitation advance, a new construction advance, a moderate rehabilitation grant, funding for an employment assistance program, or funding for annual operating costs is 50 percent of the *respective* costs of each of these activities. No match is required for technical assistance.

(c) *"In-kind" contributions.* (1) HUD will include in the matching calculation, at the value of $5 an hour, the time and services contributed by volunteers to carry out the transitional housing program. The volunteer time and services will be included in the matching calculation for the type of assistance to which the contribution relates.

* * * * *

(h) *Salaries and transportation costs.* (1) HUD will include in the matching calculation for funding for operating costs any salaries paid to staff to carry out the recipient's transitional housing program.

(2) HUD will include in the matching calculation for funding for an employment assistance program any salaries paid to residents of transitional housing under an employment assistance program, and the cost of transportation paid for residents to places of employment outside the transitional housing. Transportation costs must not exceed the cost of public transportation. Other transportation costs, subject to HUD approval, may be substituted if public transportation is not available.

13. Section 840.210 is amended by revising paragraphs (b)(3)(i), (b)(3)(ii)(B)(l), (b)(4)(iv) (B), (C), and (D), and (b)(7), to read as follows:

§ 840.210 Threshold requirements.

* * * * *

(b) * * *

(3) *Matching*—(i) *General.* Each applicant must demonstrate that it will match the amount of the assistance to be provided by HUD under this part with at least an equal amount of funds from non-Federal sources, in accordance with the requirements of § 840.130.

(ii) * * *

(B) * * *

(*1*) A commitment to provide matching funds for an acquisition/rehabilitation advance, a new construction advance, or a moderate rehabilitation grant must be a firm commitment from the funding source. This firm commitment must demonstrate the source's binding commitment to provide funds and the date upon which funds will be available. This commitment may be contingent upon the selection of the applicant for funding under this part.

* * * * *

(4) * * *

(iv) * * *

(B) If the applicant is unable to show site control, it may meet the requirement of paragraph (b)(4)(iv)(A) of this section by providing reasonable assurance that it will have control of a site for the proposed project not later than six months after notification of an award for grant assistance. "Reasonable assurance" must be satisfied by identification of a suitable site and:

(*1*) Certification that the applicant is engaged in negotiations or in other efforts for the purpose of gaining control of the identified site; or

(*2*) Other evidence satisfactory to HUD showing that the applicant will gain control of the identified site.

(C) The applicant must demonstrate that the proposed use of the site is permissible under applicable zoning ordinances and regulations; or provide a statement describing the proposed actions necessary to make the use of the site permissible under applicable zoning ordinances and regulations, and demonstrate that there is a reasonable basis to believe that the proposed zoning actions will be completed successfully and within four months following the submission of the application.

(D) The provision in paragraph (b)(iv)(B) of this section is applicable to awards of assistance under this part on or after November 1, 1987.

* * * * *

(7) *Environmental review.* (i) The environmental effects of each application must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (NEPA) and the related authorities listed in HUD's implementing regulations at 24 CFR Part 50. HUD will perform the environmental review for applications from private nonprofit organizations, governmental entities with special or limited purpose powers, and any governmental entities with general purpose powers found not to have the legal capacity to carry out this responsibility. For the environmental review requirements for all other applicants, see § 840.220.

(ii) With regard to the environmental effects of applications for which HUD performs the review, HUD will make the assessment in accordance with the provisions of NEPA and the related authorities listed in 24 CFR 50.4. Any application subject to environmental review by HUD that requires an Environmental Impact Statement (EIS) (generally, an application that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment procedures at 24 CFR Part 50, Subpart E) will not pass threshold review and will not be eligible for assistance under this part.

(iii) Applications for projects that are to be acquired, rehabilitated, or assisted with transitional housing funds and that are located in any 100-year floodplain (or 500-year floodplain for critical

actions, *i.e.*, projects intended to serve developmentally disabled, chronically mentally ill, or mobility impaired residents), as designated by maps prepared by the Federal Emergency Management Agency (FEMA), are subject to the floodplain review requirements of Executive Order 11988, Floodplain Management (May 24, 1977). The floodplain review will be a part of the environmental review described in paragraphs (b)(7) (i) and (ii) of this section. Applicants may be required to provide engineering and structural information in order for HUD to undertake the floodplain review. If HUD is unable to make a floodplain determination within 60 days from the date it publishes the first notice required under the floodplain review, and the applicant has not provided the HUD-requested information in a timely manner, the application will be rejected.

(iv) *Alternative considerations.* Executive Order 11988 requires HUD (or the applicant where the applicant assumes environmental review responsibilities under § 840.220) to consider alternatives to avoid adverse impacts associated with the occupancy and modification of floodplains. The alternatives may include actions resulting in less risk to human life or property. The review process may result in specific mitigation requirements or rejection of the site or application for assistance. As part of the eight-step process, HUD (or the applicant) must reevaluate alternatives to projects/sites located in floodplains and, where HUD performs the review, HUD will assign a higher environmental rating to applications with less hazardous sites.

(v) As a result of the environmental review of those applications for which HUD performs the review, HUD may find that it cannot approve an application unless adequate measures are taken to mitigate environmental impacts. (See *e.g.*, 24 CFR Part 51). If an application passes threshold review, HUD will consider the anticipated time delays in adopting appropriate impact mitigation measures in the ranking stage of the selection process. The environmental review may also reveal other information not contained in the application that may have relevance to the selection process. HUD will consider such information in the selection process, but, in all cases in which HUD performs the review, the environmental review must be accomplished before an application may be approved.

14. Section 840.215 is amended by adding paragraphs (b) (6) and (7), to read as follows:

§ 840.215 Ranking criteria.

* * * * *

(b) * * *

(6) *Employment assistance program.* HUD will consider the extent to which the applicant has an employment assistance program. The most points will be assigned under this criterion to applicants that demonstrate an employment assistance program that is operated with funds obtained from sources other than the transitional housing program and with funds not used as part of the applicant's matching contribution, and that demonstrate an employment assistance program providing for:

(i) The employment of all residents, either in the operation and maintenance of the housing or outside the housing, except where they are participating in a job training program, are actively seeking employment, or are unable to obtain employment due to disabilities (including mental disabilities) or other causes; and

(ii) The payment of the full transportation costs of residents to places of employment outside the housing, where such payment is necessary and appropriate.

(7) *Site control.* The most points will be assigned under this criterion to applicants that demonstrate that:

(i) The applicant owns or has a contract of sale for the site at the time of the application;

(ii) The applicant has a lease for the site for a period of 10 years from the date of the application;

(iii) The applicant has an option to purchase the site at the time of the application; or

(iv) The applicant has an option to lease the site for a period of 10 years from the date of the application.

15. Part 840, Subpart D, is amended by adding § 840.220 to read as follows:

§ 840.220 Environmental review by applicants.

(a) *Responsibility for review.* Applicants that are States, metropolitan cities, urban counties, tribes, or other governmental entities with general purpose powers, and that are deemed to have the legal capacity to do so, must assume responsibility for environmental review, decisionmaking, and action for each application for assistance, in accordance with the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (NEPA) and related laws and authorities defined in HUD's implementing regulations in 24 CFR Part 58. (The environmental review process for all other applicants is discussed in § 840.210(b)(7).)

(b) *Assurance in application.* An applicant that is required under paragraph (a) of this section to assume environmental review responsibility must include in its application an assurance that the applicant will assume all the environmental review responsibility that would otherwise be performed by HUD under 24 CFR Part 50 as the responsible Federal official under NEPA, including acceptance of jurisdiction of the Federal courts.

(c) *Location of projects in floodplains.* Applications for projects that are to be acquired, rehabilitated, or assisted with transitional housing funds and that are located in any 100-year floodplain (or in any 500-year floodplain for critical actions, *i.e.*, projects intended to serve developmentally disabled, chronically mentally ill, or mobility impaired residents), as designated by maps prepared by the Federal Emergency Management Agency (FEMA), are subject to the floodplain review requirements of Executive Order 11988, Floodplain Management (May 24, 1977). Executive Order 11988 review, as referenced under under 24 CFR Part 58, is to be performed during the environmental review.

(d) *Timing of review and restrictions on release of funds.* An applicant that is required under paragraph (a) of this section to assume environmental review responsibility need not complete the review until a reasonable time after selection for funding. In such cases, the award is subject to completion of the environmental responsibilities set out in 24 CFR Part 58 within a reasonable time period after notification of the award. (This provision does not preclude the applicant from completing the review before application and enclosing its environmental certification and Request for the Release of Funds with its application.) Section 840.210(b)(7) will not apply to an applicant that assumes environmental review responsibility, and HUD will not consider environmental impacts or time delays associated with mitigation measures for such an application in ranking the applications.

(1) Upon completion of the requirements in 24 CFR Part 58, applicants must certify the completion and submit a Request for Release of Funds.

(2) HUD will not release funds for a transitional housing project if the recipient or any other party commits transitional housing funds (*i.e.*, incurs any costs or expenditures to be paid or reimbursed with such funds) before the grantee submits its Request for Release of Funds.

(e) *Lack of legal capacity.* A general government applicant that believes that it does not have the legal capacity to carry out the responsibilities required by 24 CFR Part 58 should contact the appropriate HUD field office for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

(Approved by the Office of Management and Budget under OMB Control Number 2502–0361)

16. Section 840.310 is amended by revising paragraphs (b) (1) and (2), to read as follows:

§ 840.310 Term of commitment and repayment of advance.

* * * * *

(b) *Repayment of advance.* (1) The recipient of an acquisition/rehabilitation advance under § 840.105 or of a new construction advance under § 840.112 must repay the advance in the amount prescribed under paragraph (b)(2) of this section and in accordance with the terms prescribed by HUD.

(2) The recipient must repay the full amount of the acquisition/rehabilitation advance or the new construction advance if the project is used for transitional housing for less than 10 years following the date of initial occupancy. For each full year that the project is used for transitional housing following the expiration of this 10-year period, the amount that the recipient will be required to pay will be reduced by one-tenth of the original advance. If the project is used for transitional housing for 20 years following the date of initial occupancy, the recipient will not be required to repay any portion of the advance under this section.

* * * * *

17. Section 840.312 is revised to read as follows:

§ 840.312 Casualty insurance.

The recipient must obtain, and maintain in force, property casualty insurance, with HUD named as beneficiary, in an amount at least equal to the amount of the acquisition/rehabilitation advance, the new construction advance, or the moderate rehabilitation grant provided to the recipient.

18. Section 840.313 is revised to read as follows:

§ 840.313 Eminent domain.

A recipient whose structure is taken by eminent domain must repay the acquisition/rehabilitation advance, the new construction advance, or the moderate rehabilitation grant provided to the recipient, to the extent that funds are available from the eminent domain proceeding.

19. Part 840 is amended by adding § 840.314, to read as follows:

§ 840.314 Flood insurance.

(a) The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) prohibits the approval of applications for assistance for acquisition or construction (including rehabilitation) for projects/sites located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR Parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the application.

(b) Applicants with projects/sites located in an area identified by FEMA as having special flood hazards are responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

20. Section 840.315 is amended by revising paragraph (a), to read as follows:

§ 840.315 Prevention of undue benefits.

(a) *General.* If assistance in the form of an acquisition/rehabilitation advance, a new construction advance, or a moderate rehabilitation grant is provided for a project and the project is sold or otherwise disposed of during the 20 years following initial occupancy, the recipient must comply with such terms and conditions as HUD may prescribe to prevent the recipient from unduly benefiting from the sale or the disposition.

* * * * *

21. Section 840.330 is amended by adding paragraph (j), to read as follows:

§ 840.330 Applicability of other Federal requirements.

* * * * *

(j) *Drug- and alcohol-free facilities.* Section 402 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 requires grantees, recipients, and project sponsors of programs assisted under this part to administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries.

22. Section 840.400 is amended by revising paragraphs (a), (b), and (c)(1) and (2), and by adding paragraph (d), to read as follows:

§ 840.400 Obligation of funds, funding amendments, and deobligation.

(a) *Obligation of funds.* When HUD selects an application for funding and notifies the recipient, it will obligate funds to cover the amount of the approved assistance under Subpart B.

(b) *Increases.* After the initial obligation of funds, HUD will not make any upward revisions to the amount obligated for any approved assistance.

(c) *Deobligation.* (1) HUD may deobligate amounts for the acquisition/rehabilitation advance, the moderate rehabilitation grant, or the new construction advance:

(i) If the actual total costs of acquisition/rehabilitation, moderate rehabilitation, or new construction are less than the total cost anticipated in the application; or

(ii) If proposed activities for which funding was approved are not begun or completed within a reasonable time after selection.

(2)(i) HUD may deobligate the amounts for annual operating costs or for annual operating costs of an employment assistance program in any year following the first year of operations, based on the recipient's actual cost experience. Additionally, if a recipient's operations generate a substantial amount of resident rent (see § 840.320), HUD may adjust the operating costs allowed under the grant agreement downward, to the extent of the rent received in excess of that anticipated and budgeted in the application.

(ii) HUD may deobligate the amounts for annual operating costs or for establishing and operating an employment assistance program if the proposed transitional housing operations are not begun within a reasonable time following selection.

* * * * *

(d) *Site control.* HUD will deobligate any award for assistance if the recipient does not have control of a suitable site within one year after notification of an award.

23. Part 840, Subpart F, is amended by adding § 840.405, to read as follows:

§ 840.405 Site change.

(a) *General.* A recipient may obtain ownership or control of a suitable site different from the one specified in its application. Retention of an assistance award is subject to the new site's meeting all requirements under this part for suitable sites.

(b) *Increased cost.* If the acquisition/rehabilitation or moderate rehabilitation costs for the substitute site are greater than the amount of the advance or grant

awarded for the site specified in the application, the recipient must provide for all additional costs. If the recipient is unable to demonstrate to HUD that it is able to provide for the difference in costs, HUD may deobligate the award of assistance.

(c) *Applicability.* This section is applicable to awards of assistance made under this part on or after November 1, 1987.

PART 841—[AMENDED]

24. The Table of Contents for Part 841 is amended by adding new sections, to read as follows:

* * * * *

Subpart B—Assistance Provided

* * * * *

841.112 Funding for annual operating costs.

841.114 New construction advances.

* * * * *

Subpart D—Application and Selection Process

* * * * *

841.220 Environmental review.

* * * * *

Subpart E—Program Requirements

* * * * *

841.314 Flood insurance.

* * * * *

Subpart F—Administration

* * * * *

§ 841.405 Site change.

25. The authority citation for Part 841 is revised to read as follows:

Authority: Section 426(a), Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11386(a)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

26. Section 841.5 is amended by adding a paragraph defining "Operating costs", and by revising the paragraphs defining "Project" and "Project sponsor", to read as follows:

§ 841.5 Definitions

* * * * *

Operating costs means expenses that a recipient incurs for:

(a) The administration, maintenance, minor or routine repair, security and rental of the housing;

(b) Utilities, fuel, furnishings, and equipment for the housing;

(c) Conducting resident supportive services needs assessments (see § 841.305(b)); and

(d) The provision of supportive services to the residents of the housing. This term does not include expenses that a recipient incurs for debt service in connection with a loan used to finance acquisition or rehabilitation costs under the program.

* * * * *

Project means one or more existing structures or incomplete structures, or parts of one or more existing structures or incomplete structures, owned or leased by the project sponsor (or by the recipient) for use in connection with permanent housing for handicapped homeless persons. The project must be:

(a) A group home designed solely for housing handicapped homeless persons, or

(b) Dwelling units in a rental apartment building, a condominium project or a cooperative project.

Project sponsor means a private nonprofit organization that an authorized official of the applicant approves as to financial responsibility, or a public housing agency (PHA). The project sponsor must operate the permanent housing for handicapped homeless persons, and must provide (or coordinate the provision of) supportive services to the residents of such housing.

27. Section 841.100 is revised to read as follows:

§ 841.100 Types of assistance.

(a) *Types of assistance available.* Five types of assistance are available for permanent housing for handicapped homeless persons: acquisition/rehabilitation advances, moderate rehabilitation grants, new construction advances, annual operating costs (up to two years), and technical assistance.

(b) *Eligibility for more than one type of assistance.* Applicants may be eligible for one or any combination of the types of assistance, except that HUD will offer technical assistance only in connection with other assistance under this part.

28. Section 841.105 is amended by revising paragraph (a) and by adding paragraphs (d), (e), (f), and the OMB control number, to read as follows:

§ 841.105 Acquisition/rehabilitation advances.

(a) *Use.* HUD will advance sums to recipients to defray the cost of the acquisition, substantial rehabilitation, or acquisition and rehabilitation of existing structures selected by the recipients for use in the provision of permanent housing for handicapped homeless persons.

* * * * *

(d) *Increased advances.* In areas determined by HUD to have costs that exceed the statutory limits of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) by at least 75 percent, advances of more than $200,000 but not more than $400,000 may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements with regard to matching funds described in §841.125 are applicable to such increased advances.

(e) *Repayment of outstanding debt.* An applicant for an acquisition/rehabilitation advance that intends to use the advance to repay an outstanding debt on a loan made to purchase an existing structure must provide the following information and documentation as a part of the application for the advance:

(1) A copy of the contract of sale;

(2) A copy of the loan agreement, mortgage agreement, or deed of trust;

(3) Documentation showing the purpose of the loan;

(4) Documentation of the balance owed on the loan, mortgage, or deed of trust; and

(5) Certification that the structure has not been used as supportive housing before the receipt of assistance.

(f) *Retroactive applicability.* The provision regarding advances to repay an outstanding debt on a loan made to purchase an existing structure, contained in paragraph (a) of this section, is applicable to awards of assistance made under this part on or after November 1, 1987.

(Approved by the Office of Management and Budget under OMB Control Number 2502-0361)

29. Section 841.110 is amended by revising paragraph (b)(1), to read as follows:

§ 841.110 Moderate rehabilitation grants.

* * * * *

(b) *Amount.* (1) The moderate rehabilitation grant may not exceed the lesser of:

(i) $200,000;

(ii) The project limit; or

(iii) 50 percent of the cost of rehabilitation (see § 841.125 for a full discussion of the 50 percent matching requirements).

* * * * *

30. Part 841, Subpart B, is amended by adding § 841.112, to read as follows:

§ 841.112 Funding for annual operating costs.

(a) *General.* HUD will provide funding not to exceed 50 percent of the annual operating costs for the first year and 25 percent for the second year of permanent housing for handicapped homeless persons. (See § 841.125 for a

full discussion of the matching requirements.)

(b) *Operating costs for incomplete structures.* If an applicant seeks operating cost assistance for projects with incomplete structures, the applicant must provide reasonable assurance of completion of construction within nine months after notification of an award. Reasonable assurance may be satisfied by submission, with the application for assistance, the following:

(1) Plans and specifications for the proposed structure;

(2) Evidence that construction financing has been obtained; and

(3) A copy of the construction contract for the proposed structure containing the terms and conditions with regard to cost and date of completion.

(c) *Commitment of amounts for operating costs.* Upon approval of an application requesting operating cost assistance, HUD will obligate amounts for the period sought, not to exceed two years. Each annual funding level will be equal to an amount not exceeding the recipient's estimate of operating costs for the first year of operation, less the recipient's matching contribution of 50 percent the first year and 75 percent the second year. In each of the two years, HUD will make operating cost payments to the recipient from the amounts obligated. The annual funding level will be subject to reduction under § 841.400.

(Approved by the Office of Management and Budget under OMB Control Number 2502–0361)

31. Part 841, Subpart B, is amended by adding § 841.114, to read as follows:

§ 841.114 New construction advances.

(a) *Use.* HUD will advance sums to recipients to defray the cost of new construction of facilities for use in the provision of permanent housing for handicapped persons, where HUD finds the following factors:

(1) The project involves the cooperation of a city and a State university;

(2) The land has been donated to the applicant by a State university;

(3) The applicant proposes a transitional housing structure of at least 10,000 square feet; and

(4) The applicant proposes a model transitional housing project with a comprehensive support system, including health services, job counseling, mental health services, and housing assistance and advocacy.

(b) *Amount.* An advance for new construction may not exceed the lesser of:

(1) $200,000; or

(2) 50 percent of the aggregate cost of the new construction (see § 841.125 for a full discussion of the 50 percent matching requirements).

(c) *Increased advances.* In areas determined by HUD to have costs that exceed the statutory limits of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) by at least 75 percent, advances of more than $200,000 but not more than $400,000 may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements with regard to matching funds described in § 841.125 are applicable to such increased advances.

32. Section 841.115 is revised to read as follows:

§ 841.115 Technical assistance.

Technical assistance will be offered only in connection with an award of funds under § 841.105, § 841.110, § 841.112, or § 841.114. Technical assistance is offered to recipients through HUD field offices in such matters as the computation of resident rent under § 841.320, compliance with other Federal requirements under § 841.330, and engineering recommendations and other advice on rehabilitation plans and work write-ups. HUD will also facilitate the exchange of information among recipients and project sponsors, and help recipients and project sponsors to learn from the experience of other participants in the program.

§ 841.120 [Amended]

33. Section 841.120 is amended by removing paragraph (d), and by redesignating paragraphs (e), (f), and (g) as paragraphs (d), (e), and (f), respectively.

34. Section 841.125 is revised to read as follows:

§ 841.125 Matching requirements.

(a) *General.* An applicant must certify that it will match the assistance provided by HUD under this part with at least an equal amount of funds from non-Federal sources.

(b) *Assistance categories.* Recipients must meet this matching requirement for *each* category of assistance received. The most HUD will provide for an acquisition/rehabilitation advance, a new construction advance, a moderate rehabilitation grant, or funding for annual operating costs is 50 percent of the *respective* costs of each of these activities. No match is required for technical assistance.

(c) *"In-kind" contributions.* (1) HUD will include in the matching calculation, at the value of $5 an hour, the time and services contributed by volunteers to carry out the permanent housing program. The volunteer time and services will be included in the matching calculation for the type of assistance to which the contribution relates.

(2) HUD will include in the matching calculation the value of contributions of materials or contributions of existing structures or parts of structures, as described below:

(i) A contribution of materials may be included in the calculation of a recipient's match for an acquisition/rehabilitation advance, new construction advance, or a moderate rehabilitation grant if the materials will be used in the rehabilitation or construction of a structure for use as permanent housing for the handicapped homeless.

(ii) A contribution of materials may be included in the calculation of a recipient's match for funding of annual operating costs if the cost of the materials would fall within the definition of operating costs under § 840.5.

(iii) A contribution of a fee ownership in a structure may be included in the calculation of a recipient's match for an acquisition/rehabilitation advance, to the extent of the fair market value of the structure.

(iv) A contribution of a leasehold interest in a structure may be included in the calculation of a recipient's match for funding of annual operating costs, to the extent of the fair rental value of the building.

(d) *Existing homeless programs.* Applicants seeking funding for existing programs must commit *new* funds in order to satisfy the matching requirement. The resources necessary to maintain and operate the program at the current level are excluded from the matching computation (see § 841.120(a))

(e) *Maintenance of effort.* State or local government funds used in the matching contribution are subject to the maintenance of effort requirements described at § 841.120(b).

(f) *Other federally assisted programs.* Except for funds made available under HUD's Community Development Block Grant program, applicants may not include funds provided under a federally assisted program in the computation of their portion of the match requirement.

(g) *Rental income.* Rental amounts paid by residents of permanent housing for the handicapped homeless under § 841.320 may be included in the calculation of the recipient's match for funding of annual operating costs.

(h) *Salaries.* HUD will include in the matching calculation for funding for annual operating costs any salaries paid to staff to carry out the recipient's

permanent housing for the handicapped homeless program.

(Approved by the Office of Management and Budget under OMB Control Number 2502–0361)

35. Section 841.205 is amended by revising paragraphs (b)(5) and (b)(7), and by adding the OMB control number, to read as follows:

§ 841.205 Application requirements.

* * * * *

(b) * * *

(5) Project financial data (amount of assistance requested, a two-year operating budget, and a description of the public and private resources that are expected to be made available to comply with the matching requirements of § 841.125);

* * * * *

(7) A letter of participation as described in § 841.210(b)(2)(ii)(A), and assessment of how the proposal will meet the needs of handicapped homeless persons as described in § 841.210(b)(4)(i)(B), the designation of State agencies as described in § 841.210(b)(4)(ii)(B), and a maintenance of effort certification as described in § 841.210(b)(5);

* * * * *

(Approved by the Office of Management and Budget under OMB Control Number 2502–0361)

36. Section 841.210 is amended by revising paragraphs (b)(2)(i), (b)(2)(ii), (b)(3), and (b)(4)(v), and by removing paragraph (b)(7), and adding the OMB control number, to read as follows:

§ 841.210 Threshold requirements.

* * * * *

(b) * * *

(2) *Applicant and project sponsor*—(i) *Eligibility to receive assistance.* The applicant must be the State in which the permanent housing is to be located and must demonstrate that the project sponsor is either a private nonprofit organization or a PHA.

(ii) *Financial responsibility.* (A) HUD has determined, for purposes of this part, that all applicants are financially responsible. Applicants, however, must provide a letter of participation from an authorized official of the State containing assurances that the applicant will promptly transmit assistance to the project sponsor and will facilitate the provision of necessary supportive services to the residents of the project.

(B) Where the project sponsor is a private nonprofit organization, the applicant must demonstrate that the project sponsor has been approved by an authorized official of the State as to financial responsibility. * * *

* * * * *

(3) *Matching.* Each applicant must provide a certification stating that the assistance to be provided by HUD under this part will be matched with at least an equal amount of funds from non-Federal sources.

(4) *Proposed housing and supportive services.*

* * * * *

(v) *Siting and zoning.* Except as provided in paragraph (a) of this section, applicants must meet the following siting and zoning requirements at the time of the application:

(A) The applicant must demonstrate that it (or the project sponsor) has control of the site involved. For example, the applicant may demonstrate that it (or the project sponsor) owns or has an option to purchase, or leases or has an option to lease, the structure involved.

(B) If the applicant is unable to show site control, it may meet the requirement of paragraph (b)(4)(v)(A) of this section by providing reasonable assurance that the applicant (or the project sponsor) will have control of a site for the proposed project not later than six months after notification of an award for grant assistance. "Reasonable assurance" must be satisfied by identification of a suitable site and:

(*1*) Certification that the applicant (or the project sponsor) is engaged in negotiations or in other efforts for the purpose of gaining control of the identified site; or

(*2*) Other evidence satisfactory to HUD showing that the applicant will gain control of the identified site.

(C) The applicant must demonstrate that the proposed use of the site is permissible under applicable zoning ordinances and regulations; or provide a statement describing the proposed actions necessary to make the use of the site permissible under applicable zoning ordinances and regulations, and demonstrate that there is a reasonable basis to believe that the proposed zoning acitons will be completed successfully and within four months following the submission of the application.

(D) The provision in paragraph (b)(4)(v)(B) is applicable to awards of assistance under this part on or after November 1, 1987.

* * * * *

(Approved by the Office of Management and Budget under OMB Control Number 2502–0361)

37. Section 841.215 is amended by revising paragraph (b)(3) and by adding paragraph (b)(6), to read as follows:

§ 841.215 Ranking criteria.

* * * * *

(b) * * *

(3) *Matching.* HUD will consider the extent to which the applicant proposes to match the amount of assistance to be provided by HUD with more than an equal amount of funds from non-Federal sources. Requirements for matching amounts are discussed at §§ 841.125 and 841.210(b)(3).

* * * * *

(6) *Site control.* The most points will be assigned under this criterion to applicants that demonstrate that:

(i) The applicant (or the project sponsor) owns or has a contract of sale for the site at the time of the application;

(ii) The applicant (or the project sponsor) has a lease for the site for a period 10 years from the date of the application;

(iii) The applicant (or the project sponsor) has an option to purchase the site at the time of the application; or

(iv) The applicant (or the project sponsor) has an option to lease the site for a period of 10 years from the date of the application.

38. Part 841 is amended by adding § 841.220, to read as follows:

§ 841.220 Environmental review.

(a) *Responsibility for review.* Applicants must assume responsibility for environmental review, decisionmaking, and action for each application for assistance, in accordance with the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (NEPA) and related environmental laws and authorities defined in HUD's implementing regulations in 24 CFR Part 58.

(b) *Assurance in application.* An applicant must include in its application an assurance that the applicant will assume all the environmental review responsibility that would otherwise be performed by HUD under 24 CFR Part 50 as the responsible Federal official under NEPA, including acceptance of jurisdiction of the Federal courts.

(c) *Location of projects in floodplains.* Applications for projects to be acquired, rehabilitated, or assisted with permanent housing funds that are located in any 500-year floodplain, as designated by maps prepared by the Federal Emergency Management Agency (FEMA), are subject to the floodplain review requirements of Executive Order 11988, Floodplain

Management (May 24, 1977). Executive Order 11988 review, as referenced under 24 CFR Part 58, is to be performed during the environmental review.

(d) *Timing of review process and restrictions on release of funds.* An applicant need not complete the review until a reasonable time after selection for funding. In such cases, the award is subject to completion of the environmental responsibilities set out in 24 CFR Part 58 within a reasonable time period after notification of the award. (This provision does not preclude the applicant from completing the review before the application, and enclosing its environmental certification and Request for the Release of Funds with its application.)

(1) Upon completion of the requirements in 24 CFR Part 58, applicants must certify the completion and submit a Request for Release of Funds.

(2) HUD will not release funds for a permanent housing project if the recipient or any other party commits permanent housing funds (*i.e.,*) incurs any costs or expenditures to be paid or reimbursed with such funds) before the grantee submits its Request for Release of Funds.

(e) *Lack of legal capacity.* An applicant that believes that it does not have the legal capacity to carry out the responsibilities required by 24 CFR Part 58 should contact the appropriate HUD field office for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

(Approved by the Office of Management and Budget under OMB Control Number 2502–0361)

39. Section 841.310 is amended by revising paragraphs (b)(1) and (2), to read as follows:

§ 841.310 Term of commitment and repayment of advance.

* * * * *

(b) *Repayment of advance.* (1) The recipient of an acquisition/rehabilitation advance under § 841.105 or a new construction advance under § 841.114 must repay the advance in the amount prescribed under paragraph (b)(2) of this section and in accordance with the terms prescribed by HUD.

(2) The recipient must repay the full amount of the acquisition/rehabilitation advance or the new construction advance if the project is used for permanent housing for less than 10 years following the date of initial occupancy. For each full year that the project is used for permanent housing following the expiration of this 10-year period, the amount that the recipient will be required to pay will be reduced by one-tenth of the original advance. If the project is used for permanent housing for 20 years following the date of initial occupancy, the recipient will not be required to repay any portion of the acquisition/rehabilitation or new construction advance under this section.

* * * * *

40. Section 841.312 is revised, to read as follows:

§ 841.312 Casualty insurance.

The recipient must obtain, and maintain in force, property casualty insurance, with HUD named as beneficiary, in an amount at least equal to the amount of the acquisition/rehabilitation advance, the new construction advance, or the moderate rehabilitation grant provided to the recipient.

41. Section 841.313 is revised, to read as follows:

§ 841.313 Eminent domain.

A recipient whose structure is taken by eminent domain must repay the acquisition/rehabilitation advance, the new constuction advance, or the moderate rehabilitation grant provided to the recipient, to the extent that funds are available from the eminent domain proceeding.

42. Part 841 is amended by adding § 841.314, to read as follows:

§ 841.314 Flood insurance.

(a) The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) prohibits the approval of applications for assistance for acquisition or construction (including rehabilitation) for projects/sites located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR Parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the application.

(b) Applicants with projects/sites located in an area identified by FEMA as having special flood hazards are responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

42. Section 841.315 is amended by revising paragraph (a), to read as follows:

§ 841.315 Prevention of undue benefits.

(a) *General.* If assistance in the form of an acquisition/rehabilitation advance, a new construction advance, or a moderate rehabilitation grant is provided for a project and the project is sold or otherwise disposed of during the 20 years following initial occupancy of the project, the recipient must comply with such terms and conditions as HUD may prescribe to prevent the recipient from unduly benefiting from the sale or the disposition.

* * * * *

43. Section 841.325 is revised, to read as follows:

§ 841.325 Number of residents.

(a) *General.* If the permanent housing consists of dwelling units in a rental building, a condominium, or a cooperative, the project may not serve more than eight handicapped homeless persons, and the homeless families of the eight homeless persons (if the head of the family or the spouse of the head of the family is a handicapped homeless person). If the permanent housing is a group home, the project may not serve more than eight handicapped homeless persons, and may not serve the families of the handicapped homeless persons.

(b) *Waiver.* HUD may waive, on a case-by-case basis, the limitation on residents contained in paragraph (a) of this section if the applicant demonstrates that local market conditions dictate the development of a larger project, and that a larger project will achieve the neighborhood integration objectives of the program within the community.

44. Section 841.330 is amended by adding paragraph (j), to read as follows:

§ 841.330 Applicability of other Federal requirements.

* * * * *

(j) *Drug- and alcohol-free facilities.* Section 402 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 requires grantees, recipients, and project sponsors of programs assisted under this part to administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries.

45. Section 841.400 is amended by revising paragraphs (a), (b), and (c) (1) and (2), and by adding paragraph (d), to read as follows:

§ 841.400 Obligation of funds, funding amendments, and deobligation.

(a) *Obligation of funds.* When HUD selects an application for funding and notifies the recipient, it will obligate funds to cover the amount of the

approved assistance under Subpart B of this part.

(b) *Increases.* After the initial obligation of funds, HUD will not make any upward revisions to the amount obligated for any approved funding.

(c) *Deobligation.* (1) HUD may deobligate amounts for the acquisition/rehabilitation advance, the moderate rehabilitation grant, or the new construction advance:

(i) If the actual total costs of acquisition/rehabilitation, moderate rehabilitation, or new construction are less than the total cost anticipated in the application; or

(ii) If proposed activities for which funding was approved are not begun or completed within a reasonable time after selection.

(2) HUD may deobligate the amounts for annual operating costs for the year following the first year of operation, based on the recipient's actual cost experience. Additionally, if a recipient's operations generate a substantial amount of resident rent (see § 841.320), HUD may adjust the operating costs allowed under the grant agreement downward, to the extent of the rent received in excess of that anticipated and budgeted in the application.

* * * * *

(d) *Site control.* HUD will deobligate any award for assistance if the recipient does not have control of a suitable site within one year after notification of an award.

46. Part 841, Subpart F, is amended by adding § 841.405, to read as follows:

§ 841.405 Site change.

(a) *General.* A recipient may obtain ownership or control of a suitable site different from the one specified in its application. Retention of an assistance award is subject to the new site's meeting all requirements under this part for suitable sites.

(b) *Increased costs.* If the acquisition/rehabilitation or moderate rehabilitation costs for the substitute site are greater than the amount of the advance or grant awarded for the site specified in the application, the recipient must provide for all additional costs. If the recipient is unable to demonstrate to HUD that it is able to provide for the difference in costs, HUD may deobligate the award of assistance.

(c) *Applicability.* This section is applicable to awards of assistance made under this part on or after November 1, 1987.

Dated: March 9, 1989

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89-7209 Filed 3-24-89; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Part 888

[Docket No. N-89-1911; FR-2603]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation—Providence, RI; Special Revisions for Fiscal Year 1987

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. This document amends the Fiscal Year 1987 Fair Market Rent Schedule to establish new FMRs for the Providence, Rhode Island market area for that fiscal year. These rents are necessary to provide FMRs more comparable to market rents for new construction in this market area.

EFFECTIVE DATE: March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street, SW., Washington, DC 20410-0500. telephone (202) 426-7624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. These programs, known collectively as the Section 8 Housing Assistance Payments Program, provide assistance payments for lower income families for a veriety of housing options, including new construction and substantial rehabilitation.

Under these programs, HUD or public housing agencies (PHAs) make rental assistance payments on behalf of eligible families to owners. When families lease an eligible unit, the housing assistance payment is made and is based upon the difference between the total housing expense and the total family contribution. Initial contract rents, plus an allowance for utilities generally may not exceed area-wide Fair Market Rents (FMRs) established by the Department. FMRs are based primarily on the level of rentals paid for recently completed or newly constructed dwelling units of modest design within each market area as determined by HUD Field Office staff. For the FY 1987 FMRs previously promulgated by the Department (see the April 26, 1988 **Federal Register**, 53 FR 14954), these rents reflected the Department's cost containment efforts in relation to housing assistance provided in the Section 8 New Construction and Substantial Rehabilitation Programs.

This Document

This document announces a special revision to the entire Fiscal Year 1987 Fair Market Rent schedules applicable to the Providence, Rhode Island market area. The existing 1987 FMRs reflected data submitted by the Providence Office, as well as the cost containment efforts implemented for all 1987 New Construction and Substantial Rehabilitation rents. While the data submitted by the field office was proper, it reflected comparables built primarily during the early 1970s because there has been little construction of modestly designed rental housing in the Providence market area for the past several years. HUD's procedures, which are consistent with sound appraisal practices, permit the use of such comparables which are then adjusted for all variables, including age. Where sufficient market rental comparables do not exist, HUD procedures permit the use of an interpolation technique to arrive at indicated FMRs. Although the use of interpolation and adjustments to establish rents are sound principles and techniques, the best data for "market rents" would be that from recently constructed projects, as it would necessarily reflect current conditions in the marketplace with respect to financing, vacancy rates, etc., and would provide a degree of assurance that rents so derived should be adequate to support new projects, all factors being equal.

The Providence Office requested that the Department establish new rents for the Providence, Rhode Island market area. Careful analysis of this request and reanalysis of the FY 1987 FMRs for this market area indicate that the rents resulting from the application of the aforementioned techniques, when modified to reflect the Department's cost containment policies, are not adequate, even when it is clear that there has been compliance with the Department's cost containment guidelines with respect to

project design. Therefore, an upward adjustment of the FY 1987 FMRs for this market area is needed. Accordingly, the Department proposed a revision of the entire FY 1987 schedule applicable to the Providence, Rhode Island market area in the Federal Register on January 11, 1989, and permitted a 30-day public comment period. Two comments were received that were favorable. Therefore, this notice establishes the FMRs that were proposed on January 11, 1989, as they are set forth below. This schedule's applicability is the same as set forth in the preamble to the original FY 1987 schedule, published on April 26, 1988, at 53 FR 14954. Therefore, this special revision is retroactive to September 15, 1987.

Other Information

HUD regulations in 24 CFR Part 50, implementing section 102(2)(c) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the FMRs established in this Notice are within the exclusion set forth in § 50.20(1), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Income Housing Assistance Program (Section 8).

Accordingly, the following amendment to the FY 1987 Fair Market Rent schedule is announced for the Providence, Rhode Island Market Area:

SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

Special Revision of FY 1987 FMRs

Structural	Number of bedrooms				
	0	1	2	3	4
Detached			848	987	1104
Semi-Detached/Row	515	618	719	797	860
Walkup	463	603	695	715	840
Elevator 2-4 STY	469	621	808		
Elevator 5+ STY	475	628	816		

Authority: Section 8(c)(1), U.S. Housing Act of 1937, 42 U.S.C. 1437f; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: March 22, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 89-7224 Filed 3-24-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 194

Change in the Filing of Alcohol, Tobacco and Firearms Tax Returns and Claims

CFR Correction

In Title 27 of the Code of Federal Regulations, Parts 1 to 199, revised as of April 1, 1988, in § 194.111 appearing on page 746 a portion of the text was inaccurate. It should read as follows:

§ 194.111 [Corrected]

In § 194.111 after the second sentence the text should read as follows:

"If the regional director (compliance) determines that the delinquency was due to a reasonable cause and not to willful neglect or gross negligence, the addition to the tax will not be assessed. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, or if he made a satisfactory showing that he exercised ordinary business care and prudence in providing for payment of his tax liability and was nevertheless either unable to pay the tax or would have suffered an undue hardship if he had paid on the due date, then the delay is due to reasonable cause. Mere ignorance of the law will not be considered a reasonable cause."

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS SCRANTON (SSN-756) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: March 17, 1989.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. § 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS SCRANTON (SSN-756) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the location of the sidelights. Fully compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Judge Advocate General of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS SCRANTON (SSN-756) is a member of the SSN-688 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of section 706.3, are equally applicable to USS SCRANTON (SSN-756).

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 contines to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessel:

Vessel	Number	Distance[1]
USS SCRANTON	SSN-756	3.5

[1] Distance in meters of forward masthead light below minimum required height. Section 2(a)(i), Annex I.

3. Table Three of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2 (k), Annex I	Anchor lights, relationship of aft light to forward light in meters; § 2 (k), Annex I
USS SCRANTON	SSN-756			209'	4.3	6.1	3.4	1.7 below.

Dated: March 17, 1989

E.D. Stumbaugh,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

[FR Doc. 89-7131 Filed 3-24-89; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 185 and 186

[FAP 7H5532/R999; FRL-3543-5]

Pesticide Tolerance for Metalaxyl; Certain Food and Feed Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish a food additive and a feed additive regulation to permit residues of fungicide metalaxyl and its metabolites in or on dried hops at 20 parts per million (ppm) and spent hops at 20 ppm. These regulations to establish a maximum permissible level for residues of metalaxyl in or on the commodities were requested in a petition by Ciba-Geigy Corp.

EFFECTIVE DATE: January 3, 1989.

ADDRESS: Written objections, identified by the document control number [FAP 7H5532/R999], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Lois Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Room 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of November 15, 1988 (53 FR 45946), in which it was announced that the Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419, had submitted food/feed additive petition (FAP) 7H5532 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the fungicide metalaxy, [N-(2,6-dimethylphenyl)-N-(methyoxyacetyl)alanine methyl ester], and its metabolites containing the dimethylaniline moiety, and N-(2-hydroxymethyl-6-methylphenyl)-N-(methoxyacetyl) alanine methyl ester, each expressed as metalaxyl, in or on the commodity dry hops at 10 parts per million (ppm). The petitioner amended the petition to request a food additive tolerance at 50 ppm on dry hops and a feed additive tolerance on spent hops at 50 ppm.

Regulations (21 CFR 193.277 and 561.278 (redesignated as 40 CFR 185.4000 and 186.4000, respectively, in the **Federal Register** of June 29, 1988 (53 FR 24666)) were published in the **Federal Register** on October 28, 1987 (52 FR 41417), which established a tolerance of 50 ppm on dry and spent hops for a period of 1 year from the date of publication of the rule in the **Federal Register**. The Agency stated in those regulations that the following information had to be submitted and found to be acceptable by the Agency before consideration would be given to extending the tolerance beyond the 1-year time period: Revised label with corrected calculations for total metalaxyl (ai) applied per year; residue data on samples with analysis by the *Pesticide Analytical Manual* (PAM), Vol. II, procedure or another proven procedure that determines parent and metabolites included in the U.S. tolerance expression (storage intervals between sampling and analysis and storage conditions should be reported for all residue data).

These data have been submitted and found to be acceptable. Based on these data, Ciba-Geigy amended the petition by requesting food/feed additive tolerances for metalaxyl and its metabolites in or on dry and spent hops at 20.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulations deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by ground legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification

statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 185 and 186

Food additives, Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 3, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 185—[AMENDED]

1. In Part 185:

a. The authority citation for Part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 185.4000, paragraph (d) is revised to read as follows:

§ 185.4000 Metalaxyl.

* * * * *

(d) A food additive regulation is established for residues of the fungicide metalaxyl, [N-(2,6-dimethylphenyl)-N-(methoxyacetyl)alanine methyl ester], and its metabolites containing the 2,6-dimethylaniline moiety, and N-(2-hydroxymethyl-6-methylphenyl)-N-(methyoxyacetyl) alanine methyl ester, each expressed as metalaxyl, in or on the following processed foods when present therein as a result of application to growing hops:

Foods	Parts per million
Hops, dried	20

PART 186—[AMENDED]

2. In Part 186:

a. The authority citation for Part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.4000, paragraph (d) is revised to read as follows:

§ 186.4000 Metalaxyl.

* * * * *

(d) A feed additive regulation is established for residues of the fungicide metalaxyl, [N-(2,6-dimethylphenyl)-N-(methoxyacetyl) alanine methyl ester], and its metabolites containing the 2,6-dimethylaniline moiety, and N-[2-hydroxymethyl-6-methylpheyl)-N-(methoxyacetyl) alanine methyl ester, each expressed as metalaxyl, in or on the following processed feeds when present therein as a result of application to growning hops.

Feeds	Parts per million
Hops, spent	20

[FR Doc. 89-7179 Filed 3-24-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 721

[OPTS-50567A; FRL-3543-6]

Benzenamine, 4-Chloro-2-Methyl-; Benzenamine, 4-Chloro-2-Methyl-, Hydrochloride; Benzenamine, 2-Chloro-6-Methyl-; Significant New Use of Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) which will require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of benzenamine, 4-chloro-2-methyl- (4-COT, CAS Number 95-69-2); benzenamine, 4-chloro-2-methyl-, hydrochloride (4-COT hydrochloride, CAS Number 3165-93-3); or benzenamine, 2-chloro-6-methyl- (6-COT, CAS Number 87-63-8) for any use. EPA believes that this action is necessary because these substances may be hazardous to human health, and any use of these substances and activities associated with such use may result in significant human exposure. The notice will furnish EPA with the information needed to evaluate the intended use and associated activities, and an opportunity to protect against potentially adverse exposure to the chemical substances before it can occur.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time on April 10, 1989. This rule becomes effective on May 10, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St. SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: The SNUR for 4-COT, 4-COT hydrochloride, and 6-COT requires persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of these substances for any use. The required notice will provide EPA with the information needed to evaluate an intended use and associated activities, and an opportunity to protect against potentially adverse exposure to 4-COT, 4-COT hydrochloride, and 6-COT before it can occur. This rule was proposed in the **Federal Register** of September 16, 1988 (53 FR 36076). No public comments were received in response to the proposal.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use.

Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h) (1), (2), (3), and (5), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who

intend to import a chemical substance are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Persons who import a substance identified in a final SNUR must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR Part 707.

II. Applicability of General Provisions

In the **Federal Register** of September 5, 1984 (49 FR 35011), EPA promulgated general regulatory provisions applicable to SNURs (40 CFR Part 721, Subpart A). On July 27, 1988 (53 FR 28354), EPA promulgated amendments to the general provisions which apply to this SNUR except as provided in § 721.462(b)(1). The entire text of Subpart A was published in that document; interested persons should refer to it for further information. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR Part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting significant new use notices to submit certain fees to EPA are discussed in detail in that **Federal Register** notice.

III. Summary of this Rule

The chemical substances which are the subjects of this SNUR are 4-COT, 4-COT hydrochloride, and 6-COT. EPA is designating any use of these chemical substances as a significant new use. Thus, this rule requires persons who intend to manufacture, import, or process 4-COT, 4-COT hydrochloride, or 6-COT for any use to notify EPA at least 90 days before such manufacture, import, or processing.

IV. Background Information on 4-COT, 4-COT Hydrochloride, and 6-COT

Background information on production, use, human health effects, and exposure for 4-COT, 4-COT hydrochloride, and 6-COT appears in the preamble to the proposed rule (53 FR 36076). Interested persons should refer to that document for details.

V. Objectives and Rationale for the Rule

To determine what would constitute a significant new use of 4-COT, 4-COT hydrochloride, and 6-COT, EPA considered relevant information on the toxicity of the substances, likely exposures associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA wishes to achieve the following objectives with regard to the significant new use that is designated in this rule:

1. EPA wants to ensure that it will receive notice of any company's intent to manufacture, import, or process 4-COT, 4-COT hydrochloride, or 6-COT for any use before that activity begins.

2. EPA wants to ensure that it will have an opportunity to review and evaluate data submitted in a significant new use notice before the notice submitter begins manufacturing, importing, or processing 4-COT, 4-COT hydrochloride, or 6-COT for any use.

3. EPA wants to ensure that it will be able to regulate prospective manufacturers, importers, or processors of 4-COT, 4-COT hydrochloride, and 6-COT before any manufacturing, importing, or processing of these substances occurs, provided that the degree of potential health and environmental risk is sufficient to warrant such regulation.

4-COT, 4-COT hydrochloride, and 6-COT are possible human carcinogens and are currently not manufactured, imported, processed, or used in the U.S. according to data available to EPA. Neither 4-COT, 4-COT hydrochloride, nor 6-COT is currently subject to any Federal regulation that would notify the Federal Government of activities that might result in adverse exposures to these substances or provide a regulatory mechanism that could protect human health from potentially adverse exposures before they occurred.

EPA believes that the resumption of any use of these substances, and their related manufacture, import, or processing, has a high potential to increase the magnitude and duration of exposure to these substances from that which currently exists. Given the toxicity and potential toxicity of these substances, the reasonably anticipated situations that could result in exposure, and the lack of sufficient regulatory controls, individuals could be exposed to 4-COT, 4-COT hydrochloride, or 6-COT at levels which may result in adverse effects. For the foregoing reasons, EPA is designating any use of 4-COT, 4-COT hydrochloride, and 6-COT as a significant new use.

Because EPA is concerned about potential exposure during the entire life cycle of 4-COT, 4-COT hydrochloride, and 6-COT, EPA is modifying § 721.5(a)(2) to require any prospective manufacturer, importer, or processor of 4-COT, 4-COT hydrochloride, or 6-COT, who intends to distribute the substance in commerce, to submit a notice.

VI. Alternatives

In the proposed SNUR, EPA considered regulatory actions for 4-COT, 4-COT hydrochloride, and 6-COT including the promulgation of a TSCA section 8(a) reporting rule or a section 6 regulation. No comments were received that addressed the regulatory approach chosen. For the reasons discussed in the preamble to the proposed rule, EPA has decided to proceed with the promulgation of a SNUR for this substance.

VII. Applicability of Rule to Uses Occurring Before Effective Date of Final Rule

EPA believes that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR rather than as of the effective date of the final rule. If uses begun during the proposal period of a SNUR were considered ongoing as of the effective date of a SNUR, it would be difficult for EPA to establish SNUR notice requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the rule became effective; this interpretation of section 5 would make it extremely difficult for EPA to establish SNUR notice requirements.

Thus, persons who begin commercial manufacture, importation, or processing of 4–COT, 4–COT hydrochloride, or 6–COT for the significant new use designated in this rule between proposal and the effective date of the SNUR must cease that activity before the effective date of this rule. An exception to this general requirement appears at § 721.45(h) (53 FR 28354, July 27, 1988). A person may comply with a proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, importation, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VIII. Test Data and Other Information

EPA recognizes that under TSCA section 5, persons are not required to develop any particular test data before submitting a significant new use notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them.

However, in view of the potential health risks that may be posed by a significant new use of 4–COT, 4–COT hydrochloride, and 6–COT, EPA encourages potential SNUR notice submitters to conduct tests that would permit a reasoned evaluation of risks posed by these substances when utilized for an intended use. SNUR notices submitted without accompanying test data may increase the likelihood that EPA would take action under section 5(e).

EPA encourages persons to consult with EPA before selecting a protocol for testing the substances. As part of this optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substances. Test data should be developed according to TSCA Good Laboratory Practice Standards at 40 CFR Part 792. Failure to do so may lead EPA to find such data to be insufficient to reasonably evaluate the health or environmental effects of the substance.

EPA urges SNUR notice submitters to provide detailed information on human exposure or environmental release that may result from the significant new use of 4–COT, 4–COT hydrochloride, and 6–COT. In addition, EPA encourages persons to submit information on potential benefits of the substances and information on risks posed by the substances compared to risks posed by potential substitutes.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of 4–COT, 4–COT hydrochloride, and 6–COT. EPA's complete economic analysis is available in the public record for this rule (OPTS–50567A).

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50567A). The record includes basic information considered by EPA in developing this rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. The proposed rule.
2. The economic analysis of this rule.
3. Draft Health and Environmental Effects Profile for 4-chloro-2-methyl benzenamine and 4-chloro-2-methyl benzenamine hydrochloride.
4. TSCA section 8(e) submission (8EHQ–0986–0634 et seq.).
5. Draft Chemical Hazard Information Profile for o-toluidine.
6. This final rule.

A public version of this record containing nonconfidential copies is available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, located at Rm. NE–G004, 401 M St. SW., Washington, DC.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the reporting cost for submitting a significant new use notice will be approximately $1,400 to $8,000. EPA believes that, because of the nature of the rule and the substances involved, there will be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule will not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule will likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters are small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0038.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: March 20, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for Part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.462 to read as follows:

§ 721.462 Benzenamine, 4-chloro-2-methyl-; benzenamine, 4-chloro-2-methyl-, hydrochloride; and benzenamine, 2-chloro-6-methyl-.

(a) *Chemical substances and significant new use subject to reporting.* (1) The chemical substances benzenamine, 4-chloro-2-methyl- (CAS Number 95–69–2); benzenamine, 4-chloro-2-methyl-, hydrochloride (CAS Number 3165–93–3); and benzenamine, 2-chloro-6-methyl- (CAS Number 87–63–6) are subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Any use.

(b) *Specific requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph:

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture, import, or process for commercial purposes a substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved]

(Approved by the Office of Management and Budget under OMB control number 2070-0038)

FR Doc. 89-7180 Filed 3-24-89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-7

[FPMR Temp. Reg. A-33]

Federal and State Tax Tables To Be Used for Calculating 1989 Relocation Income Tax (RIT) Allowance Payments

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This temporary regulation implements the Federal and State tax tables to be used in conjunction with Chapter 2, Part 11 of the Federal Travel Regulations (FTR) for calculating 1989 RIT allowance payments.

DATES: *Effective date:* This regulation is effective January 1, 1989.

Expiration date: This regulation expires December 31, 1989, unless sooner superseded or incorporated into the permanent regulations of the General Services Administration (GSA).

FOR FURTHER INFORMATION CONTACT: Richard Sturdy, Travel and Transportation Regulations Staff (FBR), Washington, DC 20406, telephone FTS 557-1253 or commercial (703) 557-1253.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-7

Government employees, Travel, Travel allowances, Travel and transportation expenses.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 5 U.S.C. 5724b, Executive Order 11609, July 22, 1971, as amended by Executive Order No. 12466, February 27, 1984.

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

March 9, 1989.

Federal Property Management Regulations Temporary Regulation A-33

To: Heads of Federal agencies.

Subject: **Federal and State tax tables to be used for calculating 1989 relocation income tax (RIT) allowance payments.**

1. *Purpose.* This regulation implements the Federal and State tax tables to be used in conjunction with Chapter 2, Part 11 of the Federal Travel Regulations (FTR) for calculating 1989 RIT allowance payments.

2. *Effective date.* This regulation is effective January 1, 1989.

3. *Expiration date.* This regulation expires December 31, 1989, unless sooner superseded or incorporated into the permanent regulations of the General Services Administration (GSA).

4. *Background.* Section 5724b of subchapter II of chapter 57, title 5, United States Code, authorizes agencies to reimburse transferred employees for the additional income tax liability they incur as a result of certain moving expense reimbursements. Policies and procedures for the calculation and payment of a relocation income tax (RIT) allowance are contained in the FTR, Chapter 2, Part 11. This regulation contains the tax tables generated by the Internal Revenue Service (IRS) specifically for use in calculating 1989 RIT allowance payments.

5. *Incorporation of pertinent FTR provisions.* Chapter 2, Part 11 and appendices 2-11.A, 2-11.B, and 2-11.C of the FTR are hereby incorporated into this temporary regulation to be used with the Federal and State tax tables for 1989 RIT allowance payments.

6. *Explanation of changes.* The special tax tables for calculating the 1989 RIT allowance payments are contained in the attachments to this regulation as follows:

Attachment A—Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 1988.

Attachment B—State Marginal Tax Rates by Earned Income Level—Tax Year 1988.

Attachment C—Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 1989.

7. *Effect on other regulations.* The FTR are currently being established as a separate system for regulations to be codified in Title 41 of the Code of Federal Regulations (CFR) (41 CFR Chapters 301 through 304). Prior to expiration, the provisions of this temporary regulation, unless sooner revised or superseded, will be incorporated, as appropriate, in the FTR. Until incorporation and codification of this temporary regulation takes place, the FTR provision cited in paragraph 5, above, and its corresponding CFR codified version will continue to be part of this temporary regulation by reference.

Richard G. Austin,

Acting Administrator of General Services.

Attachment A

Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 1988

The following table is to be used to determine the Federal marginal tax rate for Year 1 for computation of the RIT allowance as prescribed in FTR 2-11.8e(1). This table is to be used for employees whose Year 1 occurred during calendar year 1988.

Marginal tax (percent) rate	Single taxpayer		Heads of household		Married filing jointly/qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$5,260	$23,920	$9,440	$34,215	$12,500	$43,410	$6,200	$21,880
28	23,920	52,310	34,215	77,300	43,410	88,740	21,880	47,475
33	52,310	113,370	77,300	166,910	88,740	197,820	47,475	133,415
28	113,370		166,910		197,820		133,415	

Attachment B

State Marginal Tax Rates by Earned Income Level—Tax Year 1988

The following table is to be used to determine State marginal tax rates for calculation of the RIT allowance as prescribed in FTR 2-11.8e(2). This table is to be used for employees who received covered taxable reimbursements during calendar year 1988.

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column.[1] [2]			
	$20,000–24,999	$25,000–49,999	$50,000–74,999	$75,000 & over
1. Alabama	5	5	5	5
2. Alaska	0	0	0	0
3. Arizona	6	8	8	8
If single status [3]	8	8	8	8
4. Arkansas	4.5	7	7	7
If single status [3]	6	7	7	7
5. California	2	6	9.3	9.3
If single status [3]	6	9.3	9.3	9.3
6. Colorado	5	5	5	5
7. Connecticut	0	0	0	0
8. Delaware	6	7.6	7.7	7.7
If single status [3]	6	7.7	7.7	7.7
9. District of Columbia	8	9.5	9.5	9.5
10. Florida	0	0	0	0
11. Georgia	6	6	6	6
12. Hawaii	8.25	9.75	10	10
If single status [3]	9.75	10	10	10
13. Idaho	7.5	7.8	8.2	8.2
If single status [3]	7.8	8.2	8.2	8.2
14. Illinois	2.5	2.5	2.5	2.5
15. Indiana	3.4	3.4	3.4	3.4
16. Iowa	6.8	8.8	9.98	9.98
If single status [3]	7.2	8.8	9.98	9.98
17. Kansas	4.05	5.3	5.3	5.3
If single status [3]	4.8	6.1	6.1	6.1
18. Kentucky	6	6	6	6
19. Louisiana	2	4	4	6
If single status [3]	4	4	6	6
20. Maine	2	8	8	8
If single status [3]	8	8	8	8
21. Maryland	5	5	5	5
22. Massachusetts	5	5	5	5
23. Michigan	4.6	4.6	4.6	4.6
24. Minnesota	6	8	8	8.5
If single status [3]	8	8.5	8.5	8.5
25. Mississippi	5	5	5	5
26. Missouri	6	6	6	6
27. Montana	7.7	11	12.1	12.1
If single status [3]	8.8	11	12.1	12.1
28. Nebraska	3.15	5	5.9	5.9
If single status [3]	5	5.9	5.9	5.9
29. Nevada	0	0	0	0
30. New Hampshire	0	0	0	0
31. New Jersey	2	2.5	3.5	3.5
32. New Mexico	3.8	6.9	7.7	8.5
If single status [3]	5.8	8.5	8.5	8.5
33. New York	5	8.375	8.375	8.375
If single status [3]	8.375	8.375	8.375	8.375
34. North Carolina	7	7	7	7
35. North Dakota	*Tax = 14% of Federal Income Tax liability [4]			
36. Ohio	2.972	4.457	5.201	6.9
If single status [3]	3.715	5.201	5.201	6.9
37. Oklahoma	4	6	6	6
If single status [3]	6	6	6	6
38. Oregon	9	9	9	9
39. Pennsylvania	2.1	2.1	2.1	2.1
40. Rhode Island	*Tax = 22.96% of Federal Income Tax liability [4]			
41. South Carolina	7	7	7	7
42. South Dakota	0	0	0	0
43. Tennessee	0	0	0	0
44. Texas	0	0	0	0
45. Utah	7.75	7.75	7.75	7.75
46. Vermont	*Tax = 23% of Federal Income Tax liability [4]			
47. Virginia	5	5.75	5.75	5.75
If single status [3]	5.75	5.75	5.75	5.75
48. Washington	0	0	0	0
49. West Virginia	4	4.5	6.5	6.5
If single status [3]	4	6	6.5	6.5
50 Wisconsin	6.55	6.95	6.93	6.93
If single status [3]	6.93	6.93	6.93	6.93
51. Wyoming	0	0	0	0

[1] Earned income amounts that fall between the income brackets shown in this table (e.g., $24,999.45, $49,999.75, etc.) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

[2] If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in FTR 2–11.8e(2)(b).

[3] This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.

[4] Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in FTR 2–11.8e(2).

Attachment C

Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 1988

The following table is to be used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in FTR 2-11.8e(1). This table is to be used for employees whose Year 1 occurred during calendar years 1983, 1984, 1985, 1986, 1987, and 1988.

Marginal tax rate (percent)	Single taxpayer		Heads of household		Married filing jointly/qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$5,320	$24,111	$9,061	$33,963	$12,940	$43,397	$6,723	$23,089
28	24,111	50,311	33,963	71,688	43,397	84,030	23,089	54,177
33	50,311	110,883	71,688	164,538	84,030	198,284	54,177	145,523
28	110,883	.....	164,538	.....	198,284	.....	145,523	.....

[FR Doc. 89-7119 Filed 3-24-89; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6712

[OR-943-09-4214-10; GP9-044; OR-19141]

Partial Revocation of the Secretarial Order, Dated July 19, 1926; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 60.55 acres of land withdrawn for the Bureau of Land Management's Powersite Classification No. 150 within the Willamette National Forest. This action will open the lands to surface entry. The lands have been and remain open to mineral leasing and are temporarily closed to mining by a Forest Service exchange proposal.

EFFECTIVE DATE: March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated July 19, 1926, is hereby revoked insofar as it affects the following described lands:

Williamette Meridian

T. 21 S., R. 3 E.,
Sec. 17, lots 8, 9, and 10.

The areas described aggregate 60.55 acres in Lane County.

2. At 8:30 a.m., on March 27, 1989, the lands will be open to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

Earl Gjelde,

Under Secretary of the Interior.

March 17, 1989.

[FR Doc. 89-7121 Filed 3-24-89; 8:45 am]

BILLING CODE 4310-33-M

43 CFR Public Land Order 6713

[UT-942-09-4214-10; U-57648]

Withdrawal of Public Land for East Canyon Reservoir; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 160 acres of public land from surface entry and mining until December 31, 2066, for the Bureau of Reclamation to protect the East Canyon Reservoir, Weber Basin Project. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mike Barnes, BLM Utah State Office, 324 South State, Suite 301, Salt Lake City, UT 84111, 801-524-4036.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect a Bureau of Reclamation reservoir:

Salt Lake Meridian

T. 2 N., R. 3 E.,
Sec. 10, SE¼.

The area described contains 160 acres in Morgan County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. The withdrawal will expire December 31, 2066, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Earl Gjelde,

Under Secretary of the Interior.

March 17, 1989.

[FR Doc. 89-7122 Filed 3-24-89; 8:45 am]

BILLING CODE 4310-DQ-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6953]

Changes in Flood Elevation Determinations; Missouri et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations

for new buildings and their contents and for second layer insurance or existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 65.4

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to quality or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective bate of modification	Community No.
Missouri: St. Louis	City of Florissant	Feb. 13, 1989 and Feb. 20, 1989, *St. Louis Post Dispatch*.	The Honorable James J. Eagan, Mayor, City of Florissant, City Hall, 955 Rue St. Francois, Florissant, Missouri 63031.	Feb. 2, 1989	290352
Ohio: Montgomery	City of Trotwood	Feb. 23, 1989 and Mar. 2, 1989, *Dayton Daily News*.	The Honorable Richard J. Haas, Mayor, City of Trotwood, 35 North Olive Road, Trotwood, Ohio 45426.	Feb. 13, 1989	390417
Virginia: Loudoun	Unincorporated areas	Mar. 23, 1989 and Mar. 30, 1989, *Loudoun Times-Mirror*.	The Honorable Philip A. Bolen Loudoun County Administrator, 18 North King Street, Leesburg, Virginia 22075.	Mar. 14, 1989	510090

Issued: March 17, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–7175 Filed 3–24–89; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

Final Flood Elevation Determinations; Florida et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD). Modified
FLORIDA	
Hillsborough County (unincorporated areas) (FEMA Docket No. 6943)	
Cypress Creek:	
At mouth	*30
Just downstream of State Route 581	*34
About 7.4 miles upstream of State Route 581	*51
Trout Creek:	
At mouth	*39
Just upstream of State Route 581	*45
About 2.6 miles upstream of State Route 581	*51
Delaney Creek:	
Just upstream of 36th Avenue	*11
About 660 feet downstream of 70th Street	*18
Just upstream of Pauls Drive	*31
Maps available for inspection at the Department of Development Coordination, Tampa, Florida.	
GEORGIA	
Kennesaw (city), Cobb County (FEMA Docket No. 6943)	
Butler Creek:	
About 3,350 feet downstream of Pine Mountain Road	*971
About 170 feet upstream of Woodland Place	*1,015
Just upstream of Summitwood Drive	*1,035
Maps available for inspection at the City Hall, Kennesaw, Georgia.	
IOWA	
Dubuque (city), Dubuque County (FEMA Docket No. 6943)	
Middle Fork Catfish Creek:	
At mouth	*620
Just downstream of Illinois Central Gulf railroad—about 1.2 miles usptream of mouth	*641
Just upstream of Illinois Central Gulf railroad—about 1.2 miles upstream of mouth	*646
Just downstream of Illinois Central Gulf railroad—about 5.3 miles upstream of mouth	*740
Just upstream of Illinois Central Gulf railroad—about 5.3 miles upstream of mouth	*745
Just downstream of Illinois Central Gulf railroad—about 6.9 miles upstream of mouth	*767
Just upstream of Illinois Central Gulf railroad—about 6.9 miles upstream of mouth	*772
About 1,450 feet upstream of Radford Road	*791
North Fork Catfish Creek:	
At mouth	*686
Just downstream of Coates Street	*696
Just upstream of Coates Street	*701
Just downstream of U.S. Highway 20	*719
Just upstream of U.S. Highway 20	*726
Just downstream of University Avenue	*730
Just upstream of University Avenue	*744
About 3,600 feet upstream of University Avenue	*761
Catfish Creek:	
About 2,000 feet downstream of Kerrigan Road	*613
About 1 mile upstream of confluence of South Fork Catfish Creek	*637
South Fork Catfish Creek:	
At mouth	*626
About .9 mile upstream of North Cascade Road	*678
Mississippi River:	
At mile 578.5	*611
At mile 585.3	*614
Maps available for inspection at the City Hall, Development Zoning Service Administration, 13th and Central, Dubuque, Iowa 52001.	
MISSISSIPPI	
Rankin County (unincorporated areas) (FEMA Docket No. 6945)	
Richland Creek:	
About 2,400 feet downstream of State Highway 468	*316
About 4,400 feet upstream of State Highway 471	*338
About 3,500 feet upstream of Interstate Highway No. 20	*373
Maps available for inspection at the Rankin County Tax Assessor's Office, 401 North Street, Brandon, Mississippi.	
NORTH CAROLINA	
Surry County (unincorporated areas) (FEMA Docket No. 6945)	
Stewarts Creek:	
At confluence with Ararat River	*985
About 0.8 miles upstream of SR 2000	*993
Lovills Creek:	
At mouth	*991
Just upstream of U.S. Route 52 Bypass	*991
About 2.1 miles upstream of Independence Boulevard	*1,051
Ararat River:	
At confluence of Stewarts Creek	*985
Just upstream of Linville Road	*1,032
About 1100 feet downstream of State Road 104	*1,088
Tumbling Rock Branch:	
Just upstream of mouth	*1,027
Just downstream of Private Road	*1,057
Just upstream of Private Road	*1,062
Just downstream of Tumbling Rock Lake Dam	*1,081
Just upstream of Tumbling Rock Lake Dam	*1,102
Just downstream of Westlake Drive	*1,121
Just upstream of Westlake Drive	*1,135
Just downstream of Boggs Drive	*1,178
Just upstream of Boggs Drive	*1,185
About 920 feet upstream of Boggs Drive	*1,191
Maps available for inspection at the Planning and Development Office, Courthouse Square, Dobson, North Carolina.	
OREGON	
Oakridge (city), Lane County (FEMA Docket No. 6943)	
Salmon Creek:	
Approximately 170 feet upstream of State Highway 58	*1,165
Approximately 1,500 feet upstream of State Highway 58	*1,178
Approximately 2,700 feet upstream of State Highway 58	*1,190
At the intersection of Eastern corporate limit and Southern Pacific Railroad	#1
Maps are available for review at City Hall, 48318 East First Street, Oakridge, Oregon.	
TENNESSEE	
Tullahoma (city), Coffee and Franklin Counties (FEMA Docket No. 6943)	
Blue Creek:	
About 860 feet downstream of Westside Drive	*1,004
At confluence of North Fork Blue Creek	*1,017
North Fork Blue Creek:	
At mouth	*1,017
About 1,360 feet upstream of Cumberland Springs Road	*1,051
North Fork Rock Creek:	
Just upstream of Old Airport Road	*1,052
Approximately 580 feet upstream of Cedar Lane	**1,055
Just downstream of Ledford Mill Road	*1067
Maps available for inspection at the City Hall, Building Department, Tullahoma, Tennessee 37388.	

** Indicates: Elevation along relocated channel.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: March 17, 1989

[FR Doc. 89–7176 Filed 3–24–89; 8:45 a.m.]

BILLING CODE: 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[FCC 89-57]

Commission Organization; Location of Commission Offices; Practice and Procedure; Filing of Petitions for Review of Commission Orders

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action adds a new § 1.13 to the Commission's rules of practice and procedure to designate the office and officer for the filing of petitions for review of Commission orders filed pursuant to 47 U.S.C. 402(a). The new procedures implement the requirements of Pub. L. 100-236, 101 Stat. 1731 which amends 28 U.S.C. 2112(a). The rule also requests that copies of notices of appeals filed pursuant to 47 U.S.C. 402(b) be served upon the General Counsel.

EFFECTIVE DATE: March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Marjorie Bertman, Office of General Counsel, (202) 254-6530.

SUPPLEMENTARY INFORMATION: In the matter of the addition of a new § 1.13 to the Commission's Rules of Practice and Procedure and an amendment to § 0.401.

This is a summary of the Commission's Final Rule, adopted February 15, 1989, adding a new § 1.13 to the Commission's rules of practice and procedure to designate the Office of General Counsel as the office, and the General Counsel as the officer, to receive copies of date-stamped, court-filed petitions for review. Such copies of petitions must be received by the agency within ten days after issuance of the agency order in order to be included in the random selection procedures for selecting a court when multiple petitions have been filed. The new procedures implement the requirements of Pub. L. 100-236, 101 Stat. 1731 which amends 28 U.S.C. 2112(a). The new section 2112(a) establishes procedures that amend the "first-to-file" rules previously used for court selection.

In addition, § 0.401, 47 CFR 0.401 has been amended to request that copies of notices of appeals filed pursuant to 47 U.S.C. 402(b) should be served upon the General Counsel.

List of Subjects in 47 CFR Parts 0 and 1

Commission organization, Practice and procedure.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

47 CFR Parts 0 and 1 are amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read:

Authority: Section 5, 48 Stat. 1068, as amended: 47 U.S.C. 155, unless otherwise noted.

2. Section 0.401 is amended by adding a new paragraph (a)(5) to read as follows:

§ 0.401 Location of Commission offices.

* * * * *

(a) * * *

(5) The location of the Office of General Counsel is Room 614, 1919 M Street NW., Washington, DC 20554.

* * * * *

PART 1—[AMENDED]

3. The authority citation for Part 1 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement 5 U.S.C. 552, unless otherwise noted.

4. A new § 1.13 is added to read as follows:

§ 1.13 Filing of petitions for review and notices of appeals of Commission orders.

(a)(1) This section pertains to each party filing a petition for review in any United States court of appeals of a Commission Order, pursuant to section 402(a) of the Communications Act, 47 U.S.C. 402(a), and 28 U.S.C. 2342(l), that wishes to avail itself of procedures established for selection of a court in the case of multiple appeals, pursuant to 28 U.S.C. 2112(a). Each such party shall, within ten days after the issuance of that order, file with the General Counsel in the Office of General Counsel, Room 614, 1919 M Street NW., Washington, DC 20554, a copy of its petition for review as filed and date-stamped by the court of appeals within which it was filed. Such copies of petitions for review must be filed by 5:30 p.m. Eastern Time on the tenth day of the filing period. A stamp indicating the time and date received by the Office of General Counsel will constitute proof of filing. Upon receipt of any copies of petitions for review, the Commission shall follow the procedures established in section 28 U.S.C. 2112(a) to determine the court in which to file the record in that case.

(2) Computation of time of the ten-day period for filing copies of petitions for review of a Commission order shall be governed by § 1.4 of the Commission's Rules, 47 CFR 1.4. The date of issuance of a Commission order for purposes of filing copies of petitions for review shall be the date of public notice as defined in § 1.4(b), 47 CFR 1.4(b).

(b) Copies of notices of appeals filed pursuant to 47 U.S.C. 402(b) shall be served upon the General Counsel.

Note.—For administrative efficiency, the Commission requests that any petitioner seeking judicial review of Commission actions pursuant to 47 U.S.C. 402(a) serve a copy of its petition on the General Counsel regardless of whether it wishes to avail itself of the procedures for multiple appeals set forth in 47 U.S.C. 2112(a).

[FR Doc. 89-6604 Filed 3-24-89; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 54, No. 57
Monday, March 27, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 563c and 571

[No. 89-1035]

Extension of Time Period for Board Action on Outstanding Proposal

Date: March 20, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule; extension of time period for Board action.

SUMMARY: Pursuant to its regulatory review procedures, *see* Board Res. No. 88-269, 53 FR 13156 (April 21, 1988), the Federal Home Loan Bank Board ("Board") hereby gives notice that it is extending the time period for possible Board action on the following outstanding proposed regulation as outlined in **SUPPLEMENTARY INFORMATION.** The Board is taking this action in order to allow adequate time for consideration of a number of complex issues raised by this proposal. It is not soliciting additional comments on this proposal.

DATE: March 20, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Hoyle, Regulatory Paralegal, (202) 906-7135, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552 or the appropriate contact persons listed in the referenced **Federal Register** document.

SUPPLEMENTARY INFORMATION: Although the comment period on the following proposal has been closed for more than six months, the Board still has the proposal under active consideration for possible further action. The Board is hereby extending the time for possible final Board action on this proposal to May 19, 1989:

Investment Portfolio Policy and Accounting Guidelines, adopted by the Board on June 9, 1988; 53 FR 23244 (June 21, 1988).

The Board notes that this action does not constitute a representation that the Board will take final action with respect to this proposal, only that it may do so within this extension of time. Moreover, this action carries no respect to this proposal, only that it may do so within this extension of time. Moreover, this action carries no implication whatsoever with respect to the Board's view of the merits of the proposal.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-7232 Filed 3-24-89; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 211, 514, and 559

[Docket No. 83N-0076]

Approval of Bulk New Animal Drug Substances for Use by Licensed Veterinarians; Withdrawal of Proposed Rule

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing its proposed rule that would have amended the animal drug regulations to establish criteria and procedures for approving new animal drug applications (NADA's) for bulk new animal drug substances that could be compounded for use by or on the prescription of licensed veterinarians. The agency has concluded that the proposed rule should be withdrawn based on the recent enactment of the Generic Animal Drug and Patent Term Restoration Act, an evaluation of the comments received, and on a reevaluation of its position on the proposed rule. FDA finds: that there is little interest among drug companies in sponsoring such NADA's, that veterinarians may lack training or equipment to compound finished drug products, that the need and anticipated benefits of the proposed rule have not been established, that many of the new animal drug substances that could have been made available under the proposed rule should be available in lower priced safe and effective generic formulations as a result of new legislation, and that the effect of the regulation could be contrary to the interests of the public health. Reliable compounding and appropriate use of new animal drugs are essential to the protection of the public health and effective implementation of the Federal Food, Drug, and Cosmetic Act. Issues raised by the comments have led the agency to conclude that significant questions exist as to the adequacy of the proposed rule's provisions in terms of maintaining the level of public and animal health protection envisioned by the statute's requirements for premarket approval, good manufacturing practices, and other measures designed to ensure the quality and appropriate use of new animal drugs.

FOR FURTHER INFORMATION CONTACT: Donald A. Gable, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION:

Introduction

In the **Federal Register** of July 1, 1985 (50 FR 27016), FDA published a proposal to amend its regulations to set forth criteria and procedures for the approval of NADA's for bulk new animal drug substances that are to be compounded into finished dosage form by or on the prescription of licensed veterinarians for use in their professional practices. FDA extended the comment period until November 14, 1985, in the **Federal Register** of October 3, 1985 (50 FR 40405). Applications for such products would have been required to meet the general premarketing approval requirements of section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b) (the act). That is, the applicants would have to show through submission of data that the finished dosage form drugs, as they were to be compounded by veterinarians or pharmacists, would be safe and effective for one or more veterinary medical indications. The documentation to have been submitted would have been that required for new animal drugs under the act.

The applicant also would have had to provide adequate labeling for the bulk new animal drug substance. The labeling would have been required to bear adequate directions for prescription use, including directions for compounding the finished dosage form

drug and the following statement: "Caution: Federal law restricts this drug substance to compounding and use by or on the prescription of a licensed veterinarian." The applicant would also have had to provide evidence to show that the bulk new animal drug substance would be manufactured, and the finished dosage form could be compounded, under the standards of quality required by the act. In view of the foregoing requirements, the agency anticipated that such NADA's would have been submitted by persons who manufacture the bulk new animal drug substance, or who would have supplied it to veterinarians or pharmacists.

FDA issued the proposal for several reasons. Some veterinarians and drug distributors had asked FDA to permit distribution of bulk new animal drug substances to veterinarians for compounding and use in the veterinarians' practices. Neither the drug substance nor the finished dosage form would have been subject of an approval. FDA has consistently refused to sanction such a practice, based on its view that the act does not authorize the practice, and has taken regulatory action to prevent distribution of unapproved bulk new animal drug substances to veterinarians. In 1981, the Presidential Task Force on Regulatory Relief requested that FDA reevaluate its bulk new animal drug substance policy and the restrictions it places on use of bulk pharmaceuticals by veterinarians. FDA's Center for Veterinary Medicine (CVM) formed a Bulk Drug Task Force, and asked the Bulk Drug Task Force to review CVM's policy, explore alternatives, and recommend a course of action. The Bulk Drug Task Force concluded that the language, as well as the purpose of the act, supported the existing FDA policy. It strongly opposed any amendment to the act that would permit the unrestricted sale of such substances to veterinarians. The Bulk Drug Task Force was concerned that the distribution of bulk new animal drug substances for use in unapproved finished dosage form products could compromise the safety and wholesomeness of food products from treated animals and thus jeopardize the health of the consumer.

Based on these concerns, the Bulk Drug Task Force concluded that continued refusal to sanction distribution to veterinarians of unapproved bulk new animal drug substances intended for use in animals in necessary. Nevertheless, because of the continued interest of some veterinarians in the use of bulk new animal drug substances, and because the Bulk Drug Task Force believed that veterinarians were qualified to compound certain drugs into finished dosage form, the task force recommended the development and implementation of a premarket approval procedure for bulk new animal drug substances. The agency concurred, and published the proposed regulation.

On November 16, 1988, the President signed into law the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670, 102 Stat. 3971). FDA believes that the new law will lead to increased competition and thereby help lower the cost of many animal drugs, achieving greater potential benefits than anticipated under the proposed rule and further decreasing incentives for marketing bulk new animal drug substances under the proposal. Many of the bulk new animal drug substances that the agency perceived could be made available under the proposed rule should be available in lower priced generic formulations, without the potential adverse effects on public health that comments suggested might ensue from adoption of the proposal.

Comments on the Proposal

The agency received 17 comments on the proposed rule. The comments were submitted by four pharmaceutical companies, five trade or professional associations, three consultants, a manufacturer of medicated animal feeds, the Federal Trade Commission, a private research organization, and two veterinary practitioners. Three of the comments favored the proposal, with certain qualifications and reservations. The remainder of the comments expressed varying degrees of opposition to the proposal. Only one distributor of bulk drugs submitted comments, and that firm appears to distribute bulk drugs primarily for use in human drugs.

FDA based its decision to propose the regulations on a number of assumptions, including: (1) Veterinarians have the training and equipment to compound a number of finished drugs for safe and effective use, (2) FDA could continue to protect the public health by approving NADA's under the proposed regulations, (3) there is a significant, identified need for the compounding of bulk drugs by veterinary practitioners, and (4) enough drug manufacturers would be interested in submitting NADA's to make the program viable. These assumptions were based, in part, on the views of veterinarians, veterinary drug distributors, and others as expressed to FDA in recent years. The comments, however, raise serious questions about the validity of these assumptions. As a result, FDA has decided not to adopt the proposed regulations.

In proposing the regulation, FDA assumed that Congress intended that drugs compounded by veterinarians for use in their practices would be approved by FDA, unless the finished drugs were not new animal drugs or were grandfathered and therefore not subject to the approval requirements. After FDA published the proposal, two Federal district courts held that drugs compounded by veterinarians need not be approved by FDA. However, the decision in one case has been reversed, *United States* v. *9/1 Kg Containers, More or Less, of an Article of Drug for Veterinary Use*, 674 F. Supp. 1344 (C.D. Ill. 1987), *rev'd* No. 88–1233 (7th Cir. July 27, 1988), and an appeal is pending in the other case, *United States* v. *Algon Chemical, Inc.*, No. 87–1820 (D. N.J. April 12, 1988), *appeal docketed*, No. 88–5478 (3d Cir. June 17, 1988f). The agency continues to believe that drugs compounded by veterinarians must be approved by the agency unless the finished drug qualifies for one of the exceptions from the aproval requirements.

Veterinarians' Ability to Compound Drugs

The comments strongly questioned the ability of veterinarians to compound drugs so that the drugs could be used safely and effectively, especially because the compounding would not be subject to the current good manufacturing practice (CGMP) regulations. Of particular significance is the fact the veterinary school faculty members who teach veterinary students about the use of drugs believe that veterinarians lack the necessary qualifications for compounding complex drug formulations.

1. Seven comments opposed the proposed rule because the comments believe that, because of lack of expertise or equipment, veterinarians could not compound finished dosage form drugs under the same conditions of quality control as could a commercial pharmaceutical manufacturing facility. One of those comments was from the American Academy of Veterinary Pharmacology and Therapeutics (AAVPT), whose membership consists primarily of veterinary school faculty members. The comment reported that none of the members of the AAVPT Advisory Committee favored the proposal. The comment stated that veterinarians do not receive training in compounding complex drug formulations that is adequate to justify the proposed regulations, although

veterinarians might be qualified to do simple compounding. On the other hand, one veterinarian expressed the opinion that veterinarians would be qualified to compound some drugs, and several other comments implied the same view.

Under the proposed rule, applications for bulk new animal drug substances that would have required complex compounding procedures or extensive knowledge would not likely have been approved by FDA. Nevertheless, FDA does not dispute the comments, which appear generally to have opposed any agency sanction of compounding by veterinarians. While the agency believes that veterinarians and pharmacists may be able to compound some of the less complex finished drugs, the comments suggest that the qualify could be lower than the finished dosage form as manufactured by the holder of an approved NADA.

2. Several comments questioned whether pharmacists would be able to compound drugs in an adequate manner. A comment from the Federal Trade Commission questioned whether the proposal would require that both veterinarians and pharmacists be qualified to compound a particular drug, and urged FDA to consider whether pharmacists might be qualified to compound some drugs that veterinarians could not.

The agency does not believe that the question of the extent to which pharmacists would be qualified to compound drugs under the proposed regulations was fully resolved by the comments. However, the agency notes that no pharmacists or pharmacists' organizations submitted comments indicating, perhaps, a lack of interest among pharmacists in the proposal.

3. Nine comments opposed the provision in proposed 21 CFR 559.4(f) that would have exempted veterinarians and pharmacists from compliance with the CGMP regulations. The comments expressed considerable concern that, because there would be no recordkeeping or other accountability, there could be no assurance that the final product would be safe. Further, four comments were opposed to the provisions in proposed 21 CFR 559.4(e) exempting veterinarians and pharmacists from registration and consequent regular FDA inspections. The comments stated that pharmaceutical and manufacturing facilities are subject to FDA inspections and audits, and that inspections provide the best assurance that proper procedures are being followed. The comments also suggested that the exemption would invite drug misuse because there would be no way to identify the veterinarian responsible for misuse. One comment stated that there would be no way to determine whether a mistake in formulation had occurred, and another stated that FDA would know less than it does not about who is making the approved finished dosage form drugs, and how those drugs are made. Five comments opposed the proposed rule because it would create a double standard, one for the manufacturer and distributor and another for the veterinarian and pharmacist. The comments included the argument that either everyone should comply with the CGMP and registration provisions of the act, or all should be exempt.

As stated in the preamble to the proposed regulation (50 FR 27021), the agency has interpreted the statutory CGMP provision as not applying to medical practitioners, including veterinarians. Also, the agency has not applied the existing CGMP regulations to pharmacists provided they are operating within the scope of their authorized practice. Further, the statute itself exempts practitioners from the registration requirements under the conditions included in the proposal. The agency had contemplated use of adulteration and misbranding provisions of the act related to actual lack of safety or effectiveness, and the provisions relating to withdrawal of NADA approval, to control any instances of improper compounding. Imposition of an elaborate regulatory scheme on veterinary and pharmacy practitioners would clearly constitute a significant new burden on veterinary health professionals, and on agency field resources, a burden that does not appear warranted by the incremental benefits likely to result from adoption of the proposal and the potential availability of bulk drug substances to verterinarians and pharmacists. If, as the comments suggest, practitioners and pharmacists would not be able generally to compound drugs in an adequate manner without CGMP compliance, regulation, and inspection, the regulations should not be adopted.

Effect on FDA'S Regulation of Drug Use

A number of comments argued that the proposal would lessen FDA's ability to prevent the distribution and use of unapproved drugs, and unlawful use of approved drugs. Two comments stated explicitly that the proposal would lead to greater risks to human health because of illegal drug residues, and a number of other implied that the same result would occur.

4. Several comments stated that the proposal would exacerbate the current problems with illegal importations of bulk drugs, and the illicit manufacture and distribution of drugs in the United States. Comments suggested that the agency should achieve control of these problems before considering the implementation of the proposal.

5. Several comments expressed concern that FDA has been unable to prevent the misuse of drugs by the ultimate user, and argued that under the proposed regulations FDA would have less ability to monitor extra label drug use. One comment stated that it would be unrealistic to expect practitioners to use the compounded drugs only for approved indications, and another comment stated that it would be impossible to determine whether the directions for use are being followed by veterinarians. Others argued that compounding or repacking and distributing drugs outside the practice of medicine would occur. Still others stated that the regulations would be understood as legitimizing illegal sale and use of the drugs. A number of comments stated that the proposal could not be enforced adequately, and that it would lead to "bath-tub" concoctions. The National Milk Producers Federation stated that the result would be an increase in the incidence of illegal drug residues in the milk supply because the proposed regulations would provide a wider latitude for individual veterinary discretion with regard to compounding bulk new animal drug substances. The comment stated that illegal drug residues have occurred in the past as a result of veterinarians prescribing unapproved combinations of drugs. The proposal, according to the comment, would lead to a requirement for more regulatory controls and greater use of enforcement resources.

6. One comment argued that FDA should permit the unrestricted compounding of unapproved bulk drugs for animal use, and other comments asumed that FDA now permits the compounding of "compendial" drugs (those listed in the United States Pharmacopeia or National Formulary), including antibiotics, without approval on the ground that the drugs are "old drugs" or that FDA has a list of "old drugs."

The agency believes that it must avoid taking any action that would make more difficult the regulation of unapproved drugs, and the unapproved use of approved drugs. Although the agency has no direct evidence that the proposal, if adopted, would necessarily result in an increase in unlawful activity, the fact that a number of comments from those who are familiar with the use of drugs

suggested that illegal use of drugs would increase is of concern. Further, the agency finds particularly disturbing the fact that several firms, in the course of regulatory discussions held since the proposal was published, have expressed to the agency the opinion that the proposed regulations would legitimize the sale of unapproved bulk new animal drug substances to veterinarians. This assertion is incorrect, but its expression supports FDA's decision to withdraw the proposal.

Also of concern to FDA is the fact that several of the comments suggested that FDA now allows a number of bulk drugs to be sold to veterinarians on the ground that they are "old drugs." FDA wishes to correct the impression that there is a list of such drugs. Any exemptions form the requirement of approval for a bulk new animal drug substance would have to be proven, on a drug-by-drug basis, by the person who is interested in marketing or using the drug.

FDA is currently attempting to stop what appears to be widespread use of bulk new animal drug substances that are never subject to an approval. The comments suggest that, if bulk drugs are to be made available to veterinarians, even under provisions of an NADA, the drugs are likely not to be used for their labeled indication. Such a result would undermine FDA's current regulatory efforts.

In deciding whether to adopt the proposed regulations, the agency must consider its responsibility for protecting the public from unsafe drug residues. As the Bulk Drug Task Force stated:

> Because there is inadequate information in the open literature relating to residues or withdrawal times for most drugs used in food-producing animals, veterinarians in clinical practice generally do not have adequate information to use untested and/or inadequately labeled drugs safely in food-producing animals.
>
> * * * Because bulk drugs would not have preclearance testing they could not be labeled with a proper withdrawal period; in fact, they are ordinarily devoid of directions for use and warning and caution statements, resulting in an increased likelihood of tissue residue violations. Because some bulk drugs may not have a counterpart approved drug for use in food-producing animals there may not be approved methodology to detect the residue and thus [the U.S. Department of Agriculture] may be unable to test for the presence of the drug in slaughtered animals.

Even if there is an approved for a finished dosage form drug containing the same active ingredient as the bulk drug, and even assuming that the veterinarian followed the directions that are on the approved drug when using the bulk drug, the public is at risk. During the process of approving a finished dosage form animal drug, FDA establishes a tolerance and a withdrawal time based on studies conducted with a finished dosage form drug that has been formulated and manufactured in a specified way, and whose active ingredient comes from a specified source and has been manufactured under specified conditions. There is no assurance that finished dosage forms compounded by veterinarians would have the same quality control and hence biovailability from batch to batch and would therefore consistently deplete in the same manner, resulting in the same residue patterns. It is for this reason, among others, that the act requires that the finished drug product be pretested to determine whether it is safe, as well as effective, and that standards be in place to assure uniform batch manufacture.

Extent of Use

Although some comments supported the proposal, suggesting that the bulk drug would be used by veterinarians, the primary incentive was thought to be economic, and other comments suggest that cost savings would be limited.

7. Three comments, submitted by the American Veterinary Medical Association (AVMA), the Federal Trade Commission, and an individual veterinarian, supported the intent of the proposed rule. The comments' consensus was that the benefit of the proposal was that it would result in lower drug costs to the veterinary practitioner, and ultimately lower food costs for the public. However, the AVMA support was contingent on there being a significant reduction in cost, an outcome that is in question in light of the comments discussed above, and the other comments' support was qualified in one or more ways. Further, several comments opposed the proposed rule because the proposal did not establish a need for the drugs. The comments argued that veterinarians already have access to all the new animal drugs that are needed. One comment argued that the cost of drugs could be lowered by reducing the cost of a conventional application.

If the agency received the kinds of applications it visualized when the proposed rule was published (e.g., supplements for pre-1962 drugs and for other drugs that require limited compounding for finished dosage form), it is unlikely that the proposed regulations would fill any gaps in therapeutic needs. The primary gain from the regulations would therefore be economic in that the regulations would result in some finished drugs at lower prices. However, as stated, it appears that cost savings may not be as significant as first projected. No comment submitted a detailed justification for the program, either in terms of the need for specific drugs, or in the form of an estimate of the amount of savings that would occur. It appears from the comments that the cost of a sponsor's development of a bulk new animal drug application, and the resources (time and equipment) required for the veterinarian or pharmacist to compound the bulk substance into final dosage form would result in negligible cost reduction to the animal owner and to the ultimate consumer of animal food products. Further, in view of the fact that there was only limited support for the proposal, it appears that the procedures would be used only infrequently. Most importantly, as described further above, other comments have raised questions as to potential adverse effects that adoption of the proposal could have on the agency's ability to protect human and animal health.

Drug Manufacturers' Interest in Sponsoring NADA's for Bulk Drugs

Drug manufacturers who submitted comments expressed serious reservations about the proposal, indicating a reluctance on their part to submit NADA's under the regulations.

8. Drug companies and the Animal Health Institute (AHI) argued that under the proposed regulations drug firms would be subjected to private (product) liability and regulatory liability even if the veterinarian did not follow the compounding directions in the labeling. Further, these comments from industry argued that because the drug companies cannot control the actions of the veterinarians and because the proposal did not require the veterinarian to comply with current good manufacturing practice (CGMP), or to keep records of the procedures that were used in compounding, there would be no reliable way to determine whether the veterinarian followed the directions on the bulk product. However, a comment by a veterinarian's professional group stated that the sponsor's liability would end when the veterinarian received the drug and that "the veterinarian would assume a great deal of legal responsibility."

Several comments discussed in some detail the reasons for their positions on product and regulatory liability. Although the agency has not undertaken to assess in any detail the validity of the arguments, the comments with regard to

liability suggest reluctance on the part of sponsors to submit NADA's under the regulations.

9. Several comments disagreed with FDA's analysis of the economic impact of the proposed rule, which was made part of the administrative record for the proposal. The comments stated the analysis greatly underestimated the costs associated with supplemental NADA's (those that would be submitted by sponsors who already hold approved NADA's for finished dosage form products) and abbreviated NADA's (for drugs that are the equivalent of drugs that were approved before October 1962), and that small businesses will find it next to impossible to enter this market because of the costs. Several comments provided cost estimates to support their comments.

The agency is aware that the sponsors may be in a better position than the agency to estimate the costs associated with drug applications. Therefore, the agency does not have a sound basis for disagreeing with the contention that the economic impact assessment as discussed in the proposed rule may underestimate the costs involved, especially for firms that do not currently market finished dosage forms containing active ingredients that would be the subject of bulk drug NADA's. To the extent that the comments are correct in projecting higher costs of compliance with the proposed rule, of course, cost savings anticipated under the proposal would be lessened. Again, the comments suggest reluctance on the part of sponsors to submit bulk drug NADA's.

10. Several comments argued that implementation of the proposed regulations would not be practical. For example, comments argued that it would be difficult to establish the reliability of proposed compounding procedures, and to assure that the drugs would be compounded correctly. FDA views these comments as further evidence of a reluctance on the part of drug companies to sponsor NADA's under the regulations. The agency believes that reliable compounding and appropriate use of new animal drugs are essential to the protection of public health and effective implementation of the statutory scheme. Thus, these comments suggest that the system of bulk drug approval and use envisioned by the proposal may not be adequate to ensure effective implementation of the act's provisions for premarket approval, good manufacturing practices, and other measures to ensure the quality of new animal drugs.

11. Four comments opposed the provision of the proposed regulations that would exempt veterinarians and pharmacists from the reporting requirements of 21 CFR 510.300. The comments stated that it would be unreasonable for the drug sponsor to be responsible for reporting drug experiences, because veterinarians and pharmacists would compound the final product and the sponsor would not have control over the ultimate compunding, storing, and use of the finished dosage form. The comments also stated that there would be no way to identify individuals who are responsible for incorrectly compounding products that result in adverse reactions or illegal drug residues.

The agency proposed to exempt veterinarians from the requirement of reporting adverse reactions directly to FDA, on the belief that veterinarians would continue, as they have in the past with respect to finished drugs, to report the reactions to the NADA sponsors, who in turn would report them to FDA. The comments imply that veterinarians might be reluctant to do so if they believed adverse reactions could be due to the manner in which they compounded the drugs. Again, the agency believes that the concerns raised by these comments raise significant public health questions, since FDA's ability to monitor adverse effects and conduct effective postmarketing surveillance is dependent upon adverse effect reporting. Moreover, the comments reflect another reason why sponsors might be reluctant to participate in the program.

Conclusion

The agency has given careful consideration to the comments that were received, and has reevaluated the proposed rule. For the reasons stated above, the agency is withdrawing the proposed rule published in the **Federal Register** of July 1, 1985 (50 FR 27016).

Dated: January 9, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary of Health and Human Services.

[Fr Doc. 89-7207 Filed 3-24-89; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6952]

Proposed Flood Elevation Determinations; Alabama et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations on the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant

economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *elevation in feet (NGVD)	
				Existing	Modified
Alabama	City of Bessemer, Jefferson County	Valley Creek	Just upstream of 15th Street	*462	*458
			Just downstream of dam	*477	*475
			About 2,000 feet upstream of U.S. Highway 11	*487	*484
		Halls Creek	Just upstream of CSX Railroad	*458	*456
			About 400 feet upstream of 14th Avenue	*458	*458
		unnamed Creek 38	Just upstream of 14th Avenue	*458	*456
			About 900 feet upstream of 14th Avenue	*458	*458
Maps available for inspection at the City Hall, Building Department, 1800 Third Avenue, Bessemer, Alabama.					
Send comments to The Honorable Edward Porter, Mayor, City of Bessemer, City Hall, 1800 Third Avenue, Bessemer, Alabama 35020.					
Alabama	City of Brighton/Jefferson County	Valley Creek	Just downstream of Jaybird Road	*476	*474
			Just upstream of Harmer Street	*484	*480
			About 700 feet upstream of U.S. Highway 11	*486	*484
Maps available for inspection at the City Hall, 3700 Main Street, Brighton, Alabama.					
Send comments to The Honorable Jewel M. Thomas, Mayor, City of Brighton, City Hall, 3700 Main Street, Brighton, Alabama 35020.					
Alabama	City of Hueytown, Jefferson County	Valley Creek	About 1,325 feet downstream of 13th Street	*460	*456
			About 660 feet downstream of 19th Street	*463	*459
			About 1,150 feet downstream of CSX Railroad	*465	*464
Maps available for inspection at the City Clerk's Office, 1318 Hueytown Road, P.O. Box C, Hueytown, Alabama.					
Send comments to The Honorable Preston Darden, Mayor, City of Hueytown, 1318 Hueytown Road, P.O. Box C, Hueytown, Alabama 35023.					
Alabama	City of Lipscomb, Jefferson County	Unnamed Creek 43	Within community	*483	*479
Maps available for inspection at the City Clerk's Office, 5512 Avenue H, Lipscomb, Alabama.					
Send comments to The Honorable Gordon McDaniel, Mayor, City of Lipscomb, 5512 Avenue H, Lipscomb, Alabama 35020.					
Alabama	City of Midfield, Jefferson County	Valley Creek	About 300 feet downstream of New Wilkes Road	*496	*493
			About 350 feet downstream of Fairfield Street	*505	*503
			About 1,800 feet upstream of Fairfield Street	*508	*508
		Unnamed Creek 46	About 400 feet downstream of Collier Drive	*505	*502
			Just upstream of Collier Drive	*506	*506
Maps available for inspection at the City Clerk's Office, 725 Bessemer Super Highway, Midfield, Alabama.					
Send comments to The Honorable Norton Burgess, Mayor, City of Midfield, 725 Bessemer Super Highway, Midfield, Alabama 35228.					
Alabama	City of Roosevelt City, Jefferson County.	Valley Creek	About 1,500 feet downstream of confluence of Unnamed Creek 44.	*486	*484
			About 1,300 feet downstream of New Wilkes Road	*494	*492
			About 900 feet upstream of New Wilkes Road	*500	*496
Maps available for inspection at the City Hall, 710 North 20th Street, Birmingham, Alabama.					
Send comments to The Honorable Richard Arrington, Jr., Mayor, City of Roosevelt City, City Hall, 710 North 20th Street, Birmingham, Alabama 35203.					
Arizona	Pinal County, Unincorporated Areas.	Santa Cruz Wash	Approximately 12,600 feet downstream of Montgomery Road.	None	*1,299
			Approximately 200 feet downstream of Montgomery Road.	None	*1,324
			Approximately 400 feet downstream of Candlestick Drive.	#2	*1,344
			Approximately 450 feet upstream of Bianco Road	#2	*1,358
			Approximately 600 feet downstream of Peters Road.	#2	*1,366
			Just northwest of the intersection of State Route 84 and Montgomery Road.	#2	#1
			Just south of the intersection of State Route 84 and Candlestick Drive.	#2	#1
		North Branch Santa Cruz Wash.	On the upstream side of Trekell Road	*1,388	*1,390
			Approximately 2,800 feet upstream of Trekell Road	*1,391	*1,390

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at the Pinal County Planning and Development Services, Floodplain Division, Administration Building No. 2, Pinal County Complex, Florence, Arizona.					
Send comments to The Honorable William Mathieson, Chairman, Pinal County Board of Supervisors, P.O. Box 827, Florence, Arizona 85232.					
Colorado	City of Commerce City, Adams County.	South Platte River	At Franklin Street (Southern Corporate Limits)	*5,136	*5,141
			At Burlington Ditch Diversion	*5,134	*5,137
			Approximately 50 feet upstream of York Street	*5,125	*5,128
			At Chicago Rock Island and Pacific Railroad	*5,122	*5,125
			At Interstate Highway 270	*5,113	*5,114
			Approximately 760 feet downstream of I-270	*5,112	*5,113
			At East 70th Avenue (Northern Corporate Limits)	*5,106	*5,106
Maps are available for review at the Department of Community Development, 5291 East 60th Avenue, Commerce City, Colorado.					
Send comments to The Honorable David Busby, Mayor, City of Commerce City, P.O. Box 40, Commerce City, Colorado 80037.					
Georgia	Unincorporated Areas of Ware County.	Satilla River	About 3.7 miles downstream of U.S. Route 82	*83	*84
			Just downstream of U.S. Route 82	*88	*88
Maps available for inspection at the Ware County Planning Department, 902 Grove Avenue, Waycross, Georgia.					
Send comments to The Honorable Reavis Dixon, Chairman of Ware County Board of Commissioners, P.O. Box 1069, Waycross, Georgia 31502.					
Illinois	Village of London Mills, Fulton and Knox Counties.	Spoon River	About 1,100 feet downstream of State Route 116	*532	*536
			About 1,850 feet upstream of 2nd Street	*538	*538
		Tributary to Swegle Creek	Just upstream of State Route 116	*533	*536
			About 3,400 feet upstream of Fulton Street	*536	*536
Maps available for inspection at the Town Hall Building Water Street, P.O. Box 347, London Mills, Illinois.					
Send comments to The Honorable Thomas Norville, Mayor, Pro-Tem, Village of London Mills, Town Hall Building Water Street, P.O. Box 347, London Mills, Illinois 61544.					
Iowa	City of Red Oak, Montgomery County.	Red Oak Creek	At mouth	*1,034	*1,034
			Just upstream of levee	*1,034	*1,028
			Just downstream of Summit Street	*1,068	*1,070
		Shallow Flooding (ponding from interior drainage).	Just east of Burlington Northern railroad and about 2000 feet north of West Oak Street.	*1,037	*1,030
			Just north of West Oak Street and just west of Burlington Northern railroad.	*1,037	*1,030
			Just north of West Oak Street and just east of Burlington Northern railroad.	*1,037	*1,030
		Shallow Flooding (overflow from Red Oak Creek).	Just west of Burlington Northern railroad and just south of West Oak Street.	*1,036	*1,028
			Just east of Burlington Northern railroad and just south of Bridge Street.	*1,036	*1,028
			At Third Avenue about 300 feet west of West Sixth Street.	*1,033	*1,021
			At Broadway north of Coolbaugh Street	*1,036	#1
Maps available for inspection at the City Administrator's Office, P.O. Box 475, Red Oak, Iowa.					
Send comments to The Honorable Ray Gustafson, Mayor, City of Red Oak, P.O. Box 475, Red Oak, Iowa 51566.					
New York	Oneida, City, Madison County	Oneida Creek	At Genesse Street	*445	*444
			Approximately 900 feet downstream of Genesse Street.	*447	*446
Maps available for inspection at the City Hall, 109 North Main Street, P.O. Box 550, Oneida, New York.					
Send comments to The Honorable Army Carinci, Mayor of the City of Oneida, Madison County, P.O. Box 550, Oneida, New York 13421.					
Ohio	Unincorporated Areas of Clermont County.	Ohio River	At downstream county boundary	*505	*504
			At upstream county boundary	*511	*509
Maps available for inspection at the Planning Commission, 76 South Riverside Street, Batavia, Ohio					
Send comments to The Honorable Martha Dorsey, Chairman of Clermont County Board of Commissioners, 76 South Riverside Street, Batavia, Ohio 45103.					
Pennsylvania	Bristol, Township, Bucks County	Delaware River	At upstream corporate limits	*11	*12
			Approximately 0.7 mile downstream of the Delaware Memorial Bridge.	*11	*12
Maps available for inspection at the Township Building, 2501 Oxford Valley Road, Levittown, Pennsylvania.					
Send comments to The Honorable Stanley P. Gawel, Manager of the Township of Bristol, Bucks County, 2501 Oxford Valley Road, Levittown, Pennsylvania 19057.					
Pennsylvania	Hatboro, Borough, Montgomery County.	Pennypack Creek	Warminster Road	*196	*201
			Approximately 700 feet upstream of corporate limits.	None	*213
		Blair Mill Run	Corporate limits	*214	*213
			Approximately 250 feet upstream of Monument Avenue.	None	'230

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *elevation in feet (NGVD)	
				Existing	Modified
		Blair Mill Run Tributary	Confluence with Blair Mill Run	None	$224
			County Line Road	None	

Maps available for inspection at the Borough Building, 120 East Montgomery Avenue, Hatboro, Pennsylvania.

Send comments to The Honorable Joseph Celano, Mayor of the Borough of Hatboro, Montgomery County, 120 East Montgomery, Hatboro, Pennsylvania 19040.

Pennsylvania	Maiden Creek, Township, Berks County.	Willow Creek	Approximately 930 feet upstream of Private Lane	*326	*324
			Approximately 240 feet upstream of State Route 73.	*313	*312

Maps available for inspection at the Township Building, Quarry Road, Blandon, Pennsylvania.

Send comments to The Honorable Leo Gallagher, Chairman of the Township of Maiden Creek Board of Supervisors, Berks County, P.O. Box 529, Blandon, Pennsylvania 19510.

Pennsylvania	Tullytown, Borough, Bucks County	Delaware River	At upstream corporate limits	*11	*12
			At downstream corporate limits	*11	*12
		Franklin Basin	Entire shoreline located within Tullytown	*11	*12
		Manor Lake	Entire shoreline located within Tullytown	*12	*13
		Van Sciver Lake	Entire shoreline located within Tullytown	*12	*13

Maps available for inspection at the Borough Hall, 500 Main Street, Tullytown, Pennsylvania 19007.

Send comments to The Honorable Robert Shellenberger, Manager of the Borough of Tullytown, Bucks County, 500 Main Street, Tullytown, Pennsylvania 19007.

Tennessee	Unincorporated Areas of Shelby County.	Johns Creek Lateral A	About 500 feet upstream of mouth	*297	*297
			About 2700 feet downstream of Holmes Road	*310	*306
			About 550 feet upstream of Holmes Road	*316	*317
			About 2650 feet upstream of Holmes Road	*321	*321
		Johns Creek Lateral AA	At mouth	*308	*306
			About 3300 feet upstream of mouth	*316	*316

Maps available for inspection at the Engineering Department, 160 N. Mid America Mall, Room 701, Memphis, Tennessee.

Send comments to The Honorable William N. Morris, Mayor, Shelby County, 160 N. Mid America Mall, 8th Floor, Memphis, Tennessee 38103.

Texas	Longview, City, Gregg and Harrison Counties.	Gilmer Creek	At confluence with Grace Creek	*288	*287
			Approximately 740 feet downstream of Dam	*306	*307
		Ray Creek	Approximately .41 mile upstream of confluence with Grace Creek.	None	*304
			Approximately 200 feet upstream of Pliler Precise Road.	None	*342
		Elm Branch	At confluence with Ray Creek	None	*326
			Downstream side of Amy Street	None	*363
		Drain No. 1 (Upper Reach).	Approximately 680 feet downstream of Loop 281	None	*368
			Approximately 400 feet upstream of Loop 281	None	*388
		Oakland Creek (Upper Reach).	Approximately 350 feet downstream of U.S. Highway 259.	None	*373
			Approximately 300 feet upstream of U.S. Highway 259.	None	*380
		Hawkins Creek	Approximately 900 feet upstream of George Richey Road.	None	*322
			At upstream corporate limits	None	*340
		McCann Creek	Approximately 1,300 feet upstream of Gray Stone Road.	None	*352
			At upstream corporate limits	None	*358
		Grace Creek	Approximately 100 feet downstream of Terry Road	None	*360
			Approximately .26 mile upstream of Winding Way	None	*373
		Murray Creek	Approximately .56 mile above confluence with Oak Branch.	None	*334
			At upstream corporate limits	None	*341
		Oak Branch	Approximately 0.6 mile above confluence of Murray Creek.	None	*332
			Approximately 450 feet upstream of corporate limits.	*None	*337

Maps available for inspection at the Public Works Department, City Hall, 300 West Cotton, Longview, Texas.

Send comments to The Honorable Lou Galosy, Mayor of the City of Longview, Gregg and Harrison Counties, P.O. Box 1952, Longview, Texas 75606-1952.

Virginia	Roanoke County, Unincorporated Areas.	Barnhardt Creek	Downstream corporate limits	*1,052	*1,058
			Upstream corporate limits	*1,087	*1,085

Maps available for inspection at the Roanoke County Administrative Center, 3738 Brambleton Avenue, Roanoke, Virginia 24018.

Send comments to the Honorable Lee Garrett, Chairman of the Roanoke County Board of Supervisors, P.O. Box 28900, Roanoke, Virginia 24018-0798.

Washington	Cowlitz County, Unincorporated Areas.	Lewis River	At confluence with the Columbia River	*23	*23
			Approximately 250 feet upstream of confluence with East Fork Lewis River.	*28	*26
			Approximately 4.30 miles upstream of Interstate Highway 5 crossing.	*40	*37

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *elevation in feet (NGVD)	
				Existing	Modified
			Approximately 2.55 miles downstream of confluence of Johnson Creek.	*46	*43
			At confluence of Johnson Creek	*59	*55
			At confluene of Husky Creek	*72	*69
			Approximately 1,000 feet downstream of Merwin Dam.	*78	*75
	Maps are available for review at the Department of Community Development, 207 Fourth Avenue North, Kelso, Washington.				
	Send comments to The Honorable R.L. Maruhn, Chairman, Cowlitz County Board of Commissioners, 207 Fourth Avenue North, Kelso, Washington 98626.				
West Virginia	City of Huntington, Cabell and Wayne Counties.	Ohio River	At downstream corporate limits	*551	*552
	Maps available for inspection at the City Hall, 800 5th Avenue, Huntington, West Virginia.				
	Send comments to The Honorable Robert R. Nelson, Mayor of the City of Huntington, Cabell and Wayne Counties, City Hall, 800 5th Avenue, P.O. Box 1659, Huntington, West Virginia 25717.				

Issued: March 17, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-7177 Filed 3-24-89; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6946]

Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 54 FR 2142 on January 19, 1989. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Unincorporated Areas of Marengo County, Alabama.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Unincorporated Areas of Marengo County, Alabama previously published at 54 FR 2142 on January 19, 1989, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

List of Subjects in 44 CFR Part 67.

Flood insurance, Floodplains.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Chickasaw Bogue:	
At mouth	*81
About 1.1 miles upstream of State Highway 28	*90
Black Warrior River: Within county	*95
Tombigbee River:	
About 2,000 feet downstream of confluence of Chickasaw Bogue	*81
At confluence of Black Warrior River	*95

Issued: March 21, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-7178 Filed 3-24-89; 8:45 am]

BILLING CODE 6718-03-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 509

[GSAR Notice No. 5-228]

Acquisition Regulation; Debarment Suspension, and Ineligibility

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would revise Subpart 509.4 by eliminating provisions that unnecessarily duplicate or repeat material contained in Federal Acquisition Regulation (FAR) Subpart 9.4 Section 509.401 would be revised to apply the procedures outlined in Subpart 509.4 to debarment and suspension proceeding arising under General Services Administration Property Management Regulation (GSPMR) 105-68 (nonprocurement debarment and suspension). The proposed rule would revise section 509.405 by requiring contracting officers to review both sections of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs, eliminating the requirement that termination of current contracts with debarred or suspended contractors be approved at a level above the contracting officer, and requiring contracting officers to consider the availability of remedies under FAR Subpart 3.2 (gratuities clause) and Subpart 3.7 (voiding and rescinding), if appropriate. The proposed rule also clarifies the role of the agency fact-finding official in proceedings conducted pursuant to FAR 9.406-3(d)(2)(ii) and FAR 9.407-3(d)(2)(i).

DATE: Comments are due in writing on or before April 26, 1989.

ADDRESS: Comments should be addresed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW., Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jim Drummond, Office of GSA Acquisition Policy and Regulations, (202) 566-1224.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempt certain procurement regulations from Executive Order 12291. This exemption applies to this proposed rule.

B. Regulatory Flexibility Act

GSA certifies that the proposed rule

will not have a significant economic effet on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The proposed rule supplements the policies and procedures set forth in FAR 9.4 and FPMR 101–50. Therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act.

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because this proposed rule does not impose any recordkeeping or information collection requirements on offerors, contractors or members of the public.

List of Subjects in 48 CFR Part 509

Goverment procurement.

PART 509—[AMENDED]

1. The authority citation for 48 CFR Part 509 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Subpart 509.4 is revised to read as follows:

Subpart 509.4—Debarment Suspension and Ineligibility

Subpart 509.4—Debarment Suspension and Ineligibility

509.401 Applicability.

This subpart applies to acquisitions of personal property, nonpersonal services (including construction), space in buildings, transportation services (FPMR 101–40.4), contracts for disposal of personal property (FPMR 101–45.6), and to covered transactions as defined at GSPMR 105–68.110(a).

509.403 Definitions.

"Debarring official" and "suspending official" mean the Associate Administrator for Acquisition Policy or a designee.

"Fact-finding official" means the Chairman of the Debarment and Suspension Board within the GSA Board of Contract Appeals or a designee.

"Notice" means a letter sent by certified mail with a return receipt requested, to the last known address of a party, its counsel, or agent for service of process. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt will then be presumed.

509.405 Effect of listing.

(a) Before initiating a pre-award survey or any procurement or disposal action, the contracting officer shall review the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs, as well as the list of contractors proposed for debarment by GSA. Any contractor listed in the section entitled "Parties Excluded from Procurement Programs" must receive the treatment specified therein. Any contractor proposed for debarment by GSA must be treated in accordance with FAR 9.406–3(c)(7). The contracting officer shall also review the "Parties Excluded from Nonprocurement Programs" section of the list and, if appropriate, contact the listing agency for further information in order to determine whether the listed party is responsible.

(b) Bids received from any contractor listed in the "Parties Excluded from Procurement Programs" section or proposed for debarment by GSA will be opened, entered on the Abstract of Bids, and rejected unless the debarring or suspending official determines in writing that there is a compelling reason to consider the bid. Proposals, quotations or offers received from any such contractor must not be evaluated for award or included in the competitive range, and discussion must not be conducted with such offeror, unless the debarring or suspending official determines, in writing, that there is a compelling reason to do so.

509.405–1 Continuation of current contracts.

(a) Termination of current contracts should be considered under the circumstances set forth in (a)(1) and (2) below.

(1) When the circumstances giving rise to the debarment or suspension also constitute a default in the contractor's performance of the contract, termination for default under a contract's "Default" clause is appropriate.

(2) If the contractor presents a significant risk to the Government in completing a current contract, the contracting officer shall determine whether termination for convenience or cancellation under appropriate contract provisions is in the Government's best interest. In making this determination, the contracting officer shall consult with counsel and consider the following factors:

(i) Seriousness of the cause for debarment or suspension;

(ii) Extent of contract performance;

(iii) Potential costs of termination and reprocurement;

(iv) Urgency of the requirement and the impact of the delay of reprocurement;

(v) Availability of other safeguards to protect the Government's interest until completion of the contract.

(b) The debarring or suspending official shall make determinations under FAR 9.405–1(b).

(c) The contracting officer should also consult with counsel regarding the availability of remedies under FAR Subpart 3.2 and FAR Subpart 3.7.

509.405–2 Restrictions on subcontracting.

(a) The debarring or suspending official shall make determinations under FAR 9.405–2.

(b) The provisions of 509.104–4(c) concerning subcontractor eligibility apply to contracts for construction, dismantling, demolition, or removal of improvements.

509.406 Debarment.

509.406–1 General.

The debarring official shall make determinations under FAR 9.406–1(c).

509.406–3 Procedures.

(a) *Investigation and referral.* (1) Any element of GSA, acting as a contracting activity, that becomes aware of circumstances which may serve as the basis for a debarment shall refer the matter to the debarring official for consideration. Circumstances that involve possible criminal or fraudulent activities must first be reported to the Office of the Inspector General (OIG) in accordance with GSPMR 105.735–216, Reporting Suspected Irregularities. If appropriate, the Inspector General will refer the matter to the debarring official.

(2) At a minimum, referrals for consideration of debarment action should include:

(i) The recommendation and rationale for the referral;

(ii) A statement of facts;

(iii) Copies of documentary evidence and a list of all witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact-finding proceeding and the subject matter of their testimony;

(iv) A list of parties including the contractor, principals, and affiliates (including last known home and business addresses, zip codes, and DUNS Number);

(v) GSA's acquisition history with the contractor, including recent experience under contracts and copies of the pertinent contracts;

(vi) A list of any known active or potential criminal investigations,

criminal or civil proceedings, or administrative claims before the Board of Contract Appeals; and

(vii) A statement regarding the impact of the debarment action on GSA programs. This statement is not required for referrals by the Inspector General.

(3) Referrals may be returned to the originator for further information or development.

(b) *Decisionmaking process.* (1) Upon receipt of a referral, the debarring official will decide whether to initiate debarment action, after coordinating the matter with assigned legal counsel.

(2) Contracting activities will be notified of proposed debarments.

(3) Where a determination is made not to initiate action, notice will be given to the agency official who made the referral.

(4) If a response to the notice of proposed debarment is not received by the debarring official within 30 calendar days of a party's receipt of the notice, the debarment becomes final.

(5) If the party desires to present information and arguments in person to the debarring official, an oral presentation will be held within 20 calendar days of receipt of the request, unless a longer period of time is requested by the party. The oral presentation will be informally conducted and a transcript need not be made. The party may supplement the oral presentation with written information and arguments.

(6) In actions not based on a conviction or judgement, the party may request a fact-finding hearing to resolve genuine disputes of material fact. The party shall identify the material facts in dispute and the basis for disputing the facts. If the debarring official determines that there is a genuine dispute of material fact, the debarring official shall refer the matter to the fact-finding official. The fact-finding official will schedule a hearing within 20 calendar days of receipt of the debarring official's request. Extensions may be granted for good cause upon the request of the party or the agency.

(7) The purpose of a fact-finding hearing is to:

(i) Afford the affected party the opportunity to dispute material facts relating to the proposed debarment through the submission of oral and written evidence;

(ii) Resolve facts in dispute and provide the debarring official with written findings of fact based on a preponderance of evidence; and

(iii) Where appropriate, provide the debarring official with a written recommendation as to whether a cause for debarment exists, based on facts as found.

(8) Hearings will be conducted by the fact-finding official in accordance with rules consistent with FAR 9.406–3(b)(2) promulgated by that official.

(9) The fact-finding official will notify the affected parties of the schedule for the hearing. The fact-finding official shall deliver written findings of fact to the debarring official (together with a transcription of the proceeding, if made) within 20 calendar days after the hearing record closes. The findings must resolve any facts in dispute based on a preponderence of the evidence.

509.407 Suspension.

509.407–1 General.

The suspending official shall make determinations under FAR 9.407–1(d).

509.407–3 Procedures.

(a) *Investigation and referral.* The procedures in 509.406–3(a) apply to referrals for suspension.

(b) *Decisionmaking process.* (1) Upon receipt of a referral, the suspending official will decide whether to suspend, after coordinating the matter with assigned legal counsel.

(2) In cases not based on an indictment, the suspending official must, through OIG, coordinate with the Department of Justice, or state prosecutorial authority. On the basis of advice received, the suspending official shall determine whether substantial interests of the Federal or a State government would be impaired in fact-finding.

(3) A response to a suspension notice must be received by the suspending official within 30 calendar days of receipt by the parties to be considered.

(4) When requested, an oral presentation before the suspending official will be conducted as outlined in 509.406–3(b)(5).

(5) Fact-finding hearings will not be conducted in actions based on indictments, or in cases in which the suspending official determines pursuant to FAR 9.407–3(b)(2) not to refer a matter to the fact-finding official. A party may request a fact-finding hearing to resolve genuine disputes of material fact in other cases. The party shall identify the material facts in dispute and the basis for disputing the facts. If the suspending official determines that there is a genuine dispute of material fact, the suspending official shall refer the matter to the fact-finding official. The fact-finding official will schedule a hearing within 20 calendar days of receipt of the suspending official's request. Extensions may be requested by the party or the agency.

(6) The purpose of a fact-finding hearing is to:

(i) Afford the affected party the opportunity to dispute material facts relating to the suspension action through the submission of oral and written evidence,

(ii) Determine whether, in light of the evidence presented, there is adequate evidence to suspect that the material allegations in the notice are true; and

(iii) Where appropriate, provide the suspending official with a written recommendation as to whether the evidence is adequate to support a cause for suspension. Hearings will be conducted as outlined in 509.406–3(b).

Dated: March 21, 1989.

Richard H. Hopf, III

Associate Administrator for Acquisition Policy.

[FR Doc. 89–7109 Filed 3–24–89; 8:45 am]

BILLING CODE 6820–61–M

Notices

Federal Register
Vol. 54, No. 57
Monday, March 27, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes; Special Committee on Financial Services, and Committee on Adjudication; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of the Committee on Governmental Processes, the Special Committee on Financial Services and the Committee on Adjudication of the Administrative Conference of the United States

Committee on Governmental Processes

Date: Friday, April 7, 1989.
Time: 12:15 p.m.–2:30 p.m.
Location: Covington and Burling, 1201 Pennsylvania Avenue NW., Washington, DC (11th floor, Main Conference Room).
Agenda: The committee will meet to discuss a study of the federal personnel complaint, appeal, and grievance processes, conducted by Professor William V. Luneburg of the University of Pittsburgh School of Law.
Contact: David M. Pritzker, 202–254–7065.

Special Committee on Financial Services

Date: Wednesday, April 12, 1989.
Time: 10:00 a.m.
Location: Skadden, Arps, Slate, Meagher & Flom, 43d Floor, 919 Third Avenue, Room 43 A & B, New York, NY 10022.
Agenda: The committee has scheduled this meeting to develop proposed recommendations dealing with Bank Failures, Risk Monitoring, and the Market for Corporate Control, based upon a report by professors Jonathan R. Macey of Cornell University Law School and Geoffrey Miller of the University of Chicago Law School. Copies of the Committee's report and draft recommendation may be obtained from the contact person named in this notice.
Contact: Brian C. Murphy, 202–254–7020.

Committee on Adjudication

Date: Friday, April 14, 1989.
Time: 1:30 p.m.
Location: Administrative Conference of the United States (Library) 2120 L Street, NW., Suite 500, Washington, DC.
Agenda: The Committee will meet to discuss a study of consular visa denials and a study of the use of regional processing facilities in the alien legalization program.
Contact: Nancy G. Miller, 202–254–7020.

Committee on Adjudication

Date: Tuesday, April 25, 1989.
Time: 1:30 p.m.
Location: Administrative Conference of the United States (Library) 2120 L Street NW., Suite 500, Washington, DC.
Agenda: The Committee will meet to discuss the study on peer review and sanctions in the Medicare Program.
Contact: Nancy G. Miller, 202–254–7020.

Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairmen may permit members of the public to present oral statements at meetings. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037.

March 22, 1989.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 89–7284 Filed 3–24–89; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Human Nutrition Information Service

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Dietary Guidelines Advisory Committee: Announcement of Appointment; Notice of Meeting; Opportunity To Provide Written Comment

SUMMARY: The Department of Agriculture (USDA) and the Department of Health and Human Services (DHHS) (a) announce the appointment of the Dietary Guidelines Advisory Committee to review the Dietary Guidelines for Americans published in 1985, (b) provide notice of the first meeting of the Committee, and (c) solicit written comments.

DATES:

(1) The Committee will meet April 5, 1989, 1:00 p.m. to 5:00 p.m. and April 6, 1989, 9:00 a.m. to 4:00 p.m. e.s.t. at the U.S. Department of Agriculture, South Building, Conference Room 1333, Washington, DC 20250.
(2) Written comments on the Guidelines may be submitted up to 5:00 p.m. e.s.t. on June 16, 1989.

FOR FURTHER INFORMATION CONTACT: Betty B. Peterkin, Executive Secretary from USDA to the Dietary Guidelines Advisory Committee, Human Nutrition Information Service, Federal Building, Room 363, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436–5090; or Linda D. Meyers, Ph.D., Executive Secretary from DHHS to the Dietary Guidelines Advisory Committee, Office of Disease Prevention and Health Promotion, Room 2132, Switzer Building, 330 C Street, Washington, DC 20201, (202) 472–5308.

SUPPLEMENTARY INFORMATION:

Dietary Advisory Committee

The nine-member Committee, appointed by the Secretaries of the two Departments, is chaired by Malden C. Nesheim, Cornell University, Ithaca, New York. Other members are Lewis A. Barness, University of Wisconsin, Madison, Wisconsin; Peggy R. Borum, University of Florida, Gainesville, Florida; C. Wayne Callaway, Washington, DC; John C. LaRosa, George Washington University, Washington, DC; Charles S. Lieber, Mt. Sinai, School of Medicine, Bronx, New York; John A. Milner, University of Illinois, Urbana, Illinois; Rebecca M. Mullis, University of Minnesota, Minneapolis, Minnesota; Barbara O. Schneeman, University of California, Davis, California.

Committee's Task

The appointment of the Committee reflects the commitment by the Departments of Agriculture and Health and Human Services to the provision of sound and current dietary guidance to the consumer. The Committee will advise the Secretaries as to whether a revision of the 1985 edition of *Nutrition and Your Health: Dietary Guidelines for Americans* is warranted. If the committee decides a revision is warranted, it will recommend revisions to the Secretaries.

Announcement of Meeting

The Committee's first meeting will be April 5 from 1:00 to 5:00 p.m. e.s.t. and April 6, 9:00 a.m. to 4:00 p.m. The meeting will be held in the U.S. Department of Agriculture's South Building, Conference Room 1333, between 12th and 14th Streets on Independence Avenue, SW., Washington, DC 20250. The agenda will include (a) orientation, (b) brief scientific review and discussion related to the guidelines, and (c) formulation of plans for future work of the Committee.

Public Participation at Meeting

The meeting is open to the public; however, space is limited. Written comments from the public will be accepted, but oral comments at the meeting will not be permitted.

Written Comment

By this notice, the Committee is soliciting submission of written comments, views, information, and data pertinent to review of the Dietary Guidelines for Americans. Comments should be sent to Betty B. Peterkin, Human Nutrition Information Service, Federal Building, Room 338, 6505 Belcrest Road, Hyattsville, Maryland 20782, by 5:00 p.m. e.s.t. on June 16, 1989.

Done at Washington, DC, this 13th of March, 1989.

James T. Heimbach,

Acting Administrator, Human Nutrition Information Service, U.S. Department of Agriculture.

J. Michael McGinnis,

Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services.

[FR Doc. 89-7221 Filed 3-24-89; 8:45 am]

BILLING CODE 3410-48-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Export Privileges, Actions Affecting; Wai Man Chung

Order

In the Matter of Wai Man Chung, #6 Carlton, Irvine, California 92714, Respondent.

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having determined to initiate an administrative proceeding against Wai Man Chung (Chung) pursuant to section 13(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2401-2420 (1982 and Supp. III 1985), as amended by Pub. L. 100-418, 102 Stat. 1107 (August 23, 1988)) (the Act), and Part 788 of the Export Administration Regulations (15 CFR Parts 768-799) (the Regulations),[1] alleging that, from on or about July 14, 1983 to an unspecified date in March 1984, Chung violated §§ 787.3(b) and 787.6 of the Regulations by conspiring with Lily Monica Wan, James Ng, Louis Tin-Yee Luk, Jonas Suet-Fai Leung and others, to export U.S.-origin computer equipment from the United States to Hong Kong without first obtaining from the Department the validated export licenses required by § 722.1 of the Regulations and by exporting U.S.-origin Aydin computer circuit boards from the United States to Hong Kong without first obtaining from the Department the validated export license required by § 772.1 of the Regulations; and

The Department and Chung having entered into a Consent Agreement whereby the parties have agreed to settle this matter by Chung's being denied all United States export privileges for a period ending five years from the date of this Order, the last three years of which shall be suspended and thereafter waived subject to the conditions set forth below; and

The terms of the Consent Agreement having been approved by me:

It is therefore ordered,

First, that Wai Man Chung, #6 Carlton, Irvine, California 92714, for a period ending five years from the date of this Order, is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. All outstanding individual validated export licenses in which Chung appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Chung's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but is not limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which Chung is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services (hereinafter related person).

D. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Chung or any related person, or whereby Chung or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any U.S.-origin commodity or technical data exported in whole or in part, or to be exported by, to, or for Chung or any related person denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the

[1] Effective October 1, 1988, the Export Administration Regulations were redesignated as 15 CFR Parts 768-799 (53 FR 37751, September 28, 1988). The transfer merely changed the first number of each Part from "3" to "7". Until such time as the Code of Federal Regulations is republished, the Regulations may be found in 15 CFR Parts 368-399 (1988).

United States. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

E. As authorized by § 788.16(c) of the Regulations, the last three years of the denial period set forth above is suspended for a period beginning two years from the date of this Order. The three-year suspension period will thereafter be waived, provided that, during the period of suspension Chung has committed no violation of the Act or any regulation, order or license issued under the Act.

Second, that the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public. A copy of this Order shall be served upon Chung and published in the Federal Register.

This constitutes the final agency action in this matter.

Entered this 15th day of March, 1989.

William Skidmore,

Assistant Secretary for Export Enforcement.

[FR Doc. 89-7194 Filed 3-24-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-583-803]

Antidumping Duty Order; Light-Walled Welded Rectangular Carbon Steel Tubing From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning light-walled welded rectangular carbon steel tubing (LWRT) from Taiwan, the U.S. Department of Commerce (the Department) and the U.S. International Trade Commission (the ITC) have determined that LWRT from Taiwan is being sold at less than fair value and that imports of LWRT from Taiwan are materially injuring or threatening material injury to an industry in the United States. Therefore, based on these findings, importers will be liable for possible antidumping duties on all LWRT from Taiwan entered, or withdrawn from warehouse, for consumption on or after November 21, 1988, the date on which the Department published its preliminary determination notice in the Federal Register. We have directed the U.S. Customs Service to collect a cash deposit of estimated antidumping duties on all imports of LWRT from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this antidumping duty order in the Federal Register.

EFFECTIVE DATE: March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Contact Barbara Williams or Kathleen McNamara, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: 202/377-0405 (Williams) or 202/377-3434 (McNamara).

SUPPLEMENTARY INFORMATION: The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the *Tariff Schedules of the United States, Annotated* (TSUSA) to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption, on or after that date is now classified solely according to the appropriate HTS number(s). As with the TSUSA numbers, the HTS numbers are provided for convenience and Customs purposes. The written product description remains dispositive.

The products covered by this investigation are light-walled welded carbon steel pipes and tubes of rectangular (including square) cross-section, having a wall thickness of less than 0.156 inch, which are currently provided for under HTS item number 7306.5000.

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act), on January 30, 1989, the Department made its final determination that LWRT from Taiwan is being sold at less than fair value (54 FR 5532—February 3, 1989). On March 20, 1989, in accordance with section 735(d) of the Act, the ITC notified the Department that imports of the subject merchandise from Taiwan are materially injuring or threatening material injury to an industry in the United States.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department is directing U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value exceeds United States price on all entries of LWRT from Taiwan. These antidumping duties will be assessed on all unliquidated entries of LWRT from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after November 21, 1988, the date on which the Department published its preliminary determination notice in the Federal Register.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would deposit normal Customs duties on LWRT from Taiwan, a cash deposit equal to the estimated weighted-average dumping duty margins noted below:

[In percent]

	Margin
Manufacturer/producer/exporter:	
Ornatube Enterprise	5.51
Vulcan Industrial Corp	40.97
Yieh Hsing Industries, Ltd	40.97
All other manufacturers/producers/exporters	29.15

This notice constitutes an antidumping duty order with respect to LWRT from Taiwan, pursuant to sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e(a)) and § 353.48 of the Commerce Regulations (19 CFR 353.38). We have deleted from the Commerce Regulations Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, room B-099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e(a)) and 19 CFR 353.48.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-7355 Filed 3-24-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-057]

Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 11, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty finding

on replacement parts for self-propelled bituminous paving equipment from Canada. The review covers two producers and/or exporters of this merchandise to the United States and the period September 1, 1986 through August 31, 1987.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioner and one respondent. Based on our analysis of the comments received and correction of clerical errors, we have changed the margins from those presented in the preliminary results.

EFFECTIVE DATE: March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–8312/2923.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 39630) the preliminary results of its administrative review of the antidumping duty finding on replacement parts for self-propelled bituminous paving equipment from Canada (42 FR 41811, September 7, 1977). The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 et. seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of replacement parts for self-propelled bituminous paving equipment, excluding attachments and parts for attachments from Canada. During the review period, such merchandise was classifiable under items 652.1540, 652.1825, 652.3530, 678.5097, 680.2500, 680.3300, 685.9026, 685.9500, 686.8040, 688.1800, 712.4900, and 773.2500 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS items 4016.93.10, 7315.11.00, 7315.89.50, 7315.90.00, 8336.50.00, 8479.99.00, 8481.20.00, 8482.10.10, 8483.90.90, 8539.29.20, 8544.20.00, 8544.41.00, 8544.51.80, 8544.60.20, 9015.30.40. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers two exporters of this merchandise to the United States, Fortress Allatt Ltd. ("Fortress") and General Construction Co. Inc. ("General"), and the period September 1, 1986 through August 31, 1987.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from the petitioner, Blaw Knox, and from one respondent Fortress Allatt Ltd. ("Fortress"). We also received rebuttal comments from Fortress.

Comment 1: Blaw Knox alleges that the Department failed to deduct all duties from the U.S. price because of a clerical error in which the lowest duty rate of three possible rates was always deducted.

Department's Position: We agree and have recalculated the results accordingly.

Comment 2: The petitioner asserts that Fortress's pre-sale warehousing costs on its exporter's sale price (ESP) sales to the United States should be treated as direct expenses as in the decision of the Court of International Trade in *Asahi Chemical Industry Co. Ltd.* v. *U.S.*, (Slip Op 88–100, July 25, 1988) because they bear a direct relationship to the sales under consideration.

Fortress, in rebuttal comments, argues that ITA is acting within its authority in treating pre-sale warehousing as an indirect expense on ESP sales as it has consistently done since 1979.

Department's Position: We agree with Fortress. There is a no evidence on the record of a direct relationship between pre-sale warehouse expenses and the specific sales under review. Therefore, we have treated Fortress's pre-sale warehouse expenses as direct expenses.

Comment 3: The petitioners alleges that the Department erred by presuming full pass-through of taxes not collected by reason of exportation of the merchandise to the United States on sales to end users. No tax was due on sales to distributors in Canada or on exports to the United States, but only on sales to end-users in Canada. Petitioner cites Fortress's response which states that no discounts are granted to end-users in either country, while discounts of 5 to 25 percent are granted on sales to distributors and argues that the 12.1 percent Canadian Federal Sales Tax is not always fully passed through to end users in Canada, in light of the difference in prices between sales to Canadian distributors and Canadian end-users.

Fortress, in rebuttal, claims that there is no relationship between the amount of the sales tax and the amount of the discount granted to distributors.

Department's Position: We disagree with the petitioner. The Department interprets the language of section 772(d)(1)(C) of the Act to allow for the addition of the full tax amount to the U.S. price when there is no indication that a manufacturer did not add the tax to the home market price. The statute does not require a measurement of the incidence of consumption taxes not collected by reason of exportation to the United States, and there is no evidence in the record to indicate that Fortress did not add the entire amount of the tax to home market price. For a more detailed discussion of Commerce's interpretation of section 772(d)(1)(C), see the Department's brief, dated April 25, 1988, in *Zenith Electronic Corp. et al.* v. *United States*, CAFC Appeal Nos. 88–1259 and 88–1260.

Comment 4: The petitioner believes that Fortress's claimed warranty expenses should be rejected because the amount of warranty in Canada was much greater than the amount in the United States and that in the absence of verification, the warranty costs reported are clearly suspect and must be rejected. Blaw Knox argues that a far more reasonable assumption is that warranty costs in the two markets are approximately equal.

Fortress, in rebuttal comments, notes that reported the actual amounts of warranty expenses and would welcome a verification of them.

Department's Position: We found no basis to reject respondent's warranty claim.

Comment 5: The petitioner alleges that the Department erred by making an inland freight adjustment for Fortress's home market sales since the terms are f.o.b. Downsview. On ESP transactions to the United States, petitioner questions the Department's adjustment to the price for freight to the customer, because terms of the sale are f.o.b. Fortress' warehouse.

In rebuttal comments Fortress states that it occasionally agrees to pay freight in the home market even though the terms of sale are f.o.b. Downsview and that this was verified in a prior review. In previous reviews, the Department permitted the total freight costs in the

home market to be allocated over all sales because the large number of sales made it impractical to allocate the freight costs to sales of individual parts, so this approach is not unreasonable in this review.

Fortress also notes that Blaw Knox is confused about the freight cost incurred on ESP sales. Those sales are f.o.b. U.S. warehouse so Fortress absorbs the freight costs of shipping to those warehouses, not to the customer as stated by Blaw Knox.

Department's Position: We have continued to adjust both home market and ESP prices for inland freight as this expense is incurred by Fortress in bringing the merchandise to the customer. We find the respondent's methodology in allocating these expenses to apprpriate sales reasonable.

Comment 6: In the disclosure example, the petitioner notes that the constructed value derived as a starting foreign market value differs from the constructed value used in the Department's margin calculations.

Fortress in rebuttal comments notes that the constructed value shown in the example was before adjustments. The Department made adjustments, where applicable, to all foreign market values for discounts, warranty expense, credit expense, and commissions to unrelated parties. When making comparisons with ESP sales the Department deducted indirect selling expenses to offset the deduction of selling expenses on U.S. sales. When these adjustments are taken into account, there is no discrepancy.

Department's Position: Fortress is correct. The foreign market value disclosed as a starting foreign market value was before adjustments, whereas the constructed value used in the margin calculation was after the appropriate adjustments had been made.

Comment 7: Fortress notes that the Department should exclude from the final results any sales of parts for Fortress Allatt machines or attachments, pursuant to its request that such parts be excluded from the scope of the finding.

Department's Position: We agree in part. The Department ruled on January 19, 1989 that replacement parts for Fortress machines are subject to the finding but that replacement parts for attachments are not subject to the finding.

Comment 8: Fortress contends that the Department calculated credit expense differently for sales to the United States than it did for home market sales. For U.S. sales, the Department calculated the expense by multiplying the credit factor (average number of days times average short term interest rate) times the "starting price" less discount, if any, while the home market credit expense was calculated by multiplying the credit factor times starting price less discount, if any, and less freight, warranty and commission. Fortess notes that the Department should calculate the credit expense on the same basis in both markets.

Department's Position: We agree and have recalculated the credit expense using the starting price less discount only for both markets.

Comment 9: Fortress contends that a portion of the freight cost on ESP sales from the California and Georgia warehouses was double-counted. The total freight cost from Downsview (not Buffalo) to California or Georgia was deducted as well as a factor for the freight from Downsview to Buffalo, in effect double-counting the Downsview Buffalo portion. Because the parts are shipped directly from Downsview for these sales, the Department should not make an additional deduction for freight from Downsview to Buffalo.

Department's Position: We agree and have recalculated the results accordingly.

Final Results of the Review

As a result of the comments received and correction of clerical errors, we have revised our preliminary results for Fortress Allatt Ltd. and General Construction Co. Inc., and we determine that the following weighted-average margins exist for the period September 1, 1986 through August 31, 1987:

Manufacturer/Exporter	Margin (percent)
Fortress Allatt Ltd.	1.31
General Construction	1.31

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms.

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after August 31, 1987 and who is unrelated to any reviewed firm, or any previously reviewed firm, a cash deposit of 1.31 percent shall be required. These deposit requirements are effective for all shipments of Canadian replacement parts for self-propelled paving equipment entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: March 20, 1989.

[FR Doc. 89-7213 Filed 3-24-89; 8:45 am

BILLING CODE 3510-DS-M

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting; Correction

ACTION: Correction notice, change in meeting time.

The notice published March 17, 1989 (54 FR 11259) incorrectly stated that time the closed executive session would begin. The executive session will begin at 1:30 p.m. and continue until 3:00 p.m. The open session will be held from 9:00 until 11:45 a.m.

Date: March 21, 1989.

Michael E. Zacharia,.

Assistant Secretary for Export Administration.

[FR Doc. 89-7205 Filed 3-24-89; 8:45 am]

BILLING CODE 3510-DT-M

Short-Supply Review on Certain Hot-Dipped Tinplate; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to various sizes of hot-dipped tinplate used in the manufacture of concentrated lemon juice cans.

DATE: Comments must be submitted no later than April 6, 1989.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of

Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the U.S.-Japan Arrangement on Certain Steel Products provides that if the U.S. "determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the USA for a particular category or sub-category (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such category or sub-category * * *"

We have received a short-supply request for hot-dipped tinplate, bright finish, conforming to ASTM A–623, meeting the following specifications:

(a) *Dimensions:* 0.030 millimeters in thickness, 680 to 865 millimeters in length, and from 704 to 991 millimeters in width.

(b) *Temper Types:* 4 and 5

(c) *Tin Coating Weight:* 1.5–2.0 lbs/BB

(d) *Base Steel Thickness:* 107 lbs (.01177 ± 5%)

This product is used in the production of concentrated lemon juice cans.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than April 6, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce, at the above address.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89–7214 Filed 3–24–89; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Groundfish of the Gulf of Alaska and Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of cancellation of a scoping meeting.

SUMMARY: A notice of intent to prepare a supplemental environmental impact statement and notice of scoping meetings was published February 23, 1989 (54 FR 7814). The North Pacific Fishery Management Council announces that one of the scoping meetings listed in that notice has been cancelled. No alternative date has been scheduled at this time.

DATE: The scoping meeting scheduled for April 6, 1989, in Bethel, Alaska, has been cancelled.

FOR FURTHER INFORMATION CONTACT: Dick Tremaine, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907–271–2809.

Dated: March 21, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–7208 Filed 3–24–89; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Application for Permit: Center for Coastal Studies (P444)

Notice is hereby given that an Applicant has applied in due form for a Pemit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. *Applicant:* Center for Coastal Studies, Box 826, Provincetown, MA 02657.

2. *Type of Permit:* Scientific research.

3. *Name and Number of Marine Mammals:*

humpback whales (*Magaptera novaeangliae*).....310
fin whales (*Balaenoptera physalus*).....90
right whales (*Eubalaena glacialis*).....60

4. *Type of Take:* Take is by harassment during photographic activities. Photographs will be taken of natural markings of animals for population studies. The number of times a whale will be approached is contingent upon occurrence and distribution of individuals; however it is likely some will be approached repeatedly during photographing. The applicant also requests authorization to disentangle whales caught in nets, lines or other fishing gear.

5. *Location of Activity and duration:* Western North Atlantic over a 5-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Bldg., Gloucester, Massachusetts 01930;

Date: March 17, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–7181 Filed 3–24–89; 8:45 am]

BILLING CODE 3510–22–M

[Permit No. 629, Mod 1]

Marine Mammals; Issuance of Modification; Sea Life Park (P10D)

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50

CFR Part 216), scientific research Permit No. 629 issued to Sea Life Park, Inc., Makapuu Point, Waimanalo, Hawaii 96795 (53 FR 10140) is modified as follows:

Section A.1 is deleted and replaced by:

1. Four (4) Pacific false killer whales (*Pseudorca crassidens*) of either sex may be taken or imported for public display.

Sections B.1 and B.2 are deleted and replaced by:

1. The animals authorized above shall be imported from Japan or taken in Hawaiian waters by the means and for the purposes described in the application and modification.

2. The Holder shall notify the Pacific Islands Coordinator, Southwest Region, Pacific Area Office, Protected Species Branch, 2570 Dole Street, Honolulu, Hawaii 96822, (808–955–8831) at least two weeks in advance of the proposed collection so that the Pacific Islands Coordinator may make a determination of the potential for monitoring the capture operations; or at least 24 hours prior to importation so that a NMFS representative may meet the shipment should he determine that to be desirable.

Sections B.4 and B.5, are added:

4. The holder may collect the animals authorized in Secition A.1 under one of the following three circumstances. The Holder shall request written authorization from the Assistant Administrator for Fisheries prior to the collection of the authorized animals providing information in support of the selection option:

(a) The applicant shall provide survey or other data demonstrating that the *Pseudorca* population in the Hawaiian Island area is composed of at least 200–400 individuals (200 if two or fewer females are to be taken and 300 or 400 if three or four females are to be taken); or

(b) Removals from any single school shall not exceed two percent of the minimum estimated school size (1.5 percent if 75 percent of the removals are female or 1 percent if 100 percent of the removals are females). If this alternative is selected, it should be recognized that authority for further removals in any 12 month period will require the ability to distinguish between individual schools. The Holder shall provide the results of aerial surveys in connection with this activity. This report shall be endorsed by a qualified scientist or NMFS observer accompanying the collection team; or

(c) The applicant shall provide other reasonable evidence that the affected population is at or above its maximum net productivity level and the proposed removals will not cause or contribute to the population being reduced below its maximum net productivity level.

5. The Holder shall closely monitor the condition of the animal(s) initially captured during the collection and transport operations. The Holder shall submit a report of the procedures followed to the Assistant Administrator for Fisheries if any behavioral and physiological problems associated with capture shock arise, or if mortality occurs. Approval for additional captures will be at the discretion of the Assistant Administrator in consultation with the Director, Southwest Region.

Issuance of this modification is based on a finding that the proposed taking is consistent with the purposes and policies of the Marine Mammal Protection Act. The Service has determined that Sea Life Park offers an acceptable program for education or conservation purposes. The Sea Life Park facilities are open to the public on a regularly scheduled basis and access to the facilities is not limited or restricted other than by the charging of an admission fee.

Documents associated with this modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs (F/PR1), National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland, 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Date: March 21, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[Doc. 89–7182 Filed 3–24–89; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals: Issuance of Permit; NMFS, Southwest Fisheries Center (P77#32)

On October 26, 1988, notice was published in the **Federal Register** (53 FR 43255) that an application had been filed by the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038–0271 for a permit to take specimen materials from an unspecified number of nonendangered cetacean species killed incidentally in tuna purse-seine fishing operations, for purposes of scientific research.

Notice is hereby given that on March 21, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that this research satisfies the issuance criteria for scientific research permits. The taking is required to further a bona fide scientific purpose and does not involve unnecessary duplication of research. No lethal taking is authorized.

The Permit is available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: March 21, 1989.

[FR Doc. 89–7183 Filed 3–24–89; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Japan

March 22, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: March 29, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6583. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The current bilateral textile agreement between the Governments of the United States and Japan establishes a specific limit for man-made fiber textile products in Category 648.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 49900, published on December 12, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 22, 1989.

Commissioner of Customs Department of the Treasury Washington, DC 20229

Dear Mr. Commissioner:

This directive amends, but does not cancel, the directive issued to you on December 6, 1988 by the Chairman, Committee for the Implementation of Textile Agreements, concerning cotton, wool and man-made fiber textile products, produced or manufactured in Japan and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on March 29, 1989, you are directed to amend the December 6, 1988 directive to include a limit of 515,512 dozen[1] for man-made fiber textile products in Category 648. Category 648 shall remain subject to the Group I limit.

Also effective on March 29, 1989, import charges already made to Category 648 shall be applied to the limit established in this directive.

Imports charged to Category 648 for the period January 1, 1988 through December 31, 1988 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-7203 Filed 3-24-89; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1988.

Announcing the Amendment of an Import Restraint Period and Establishment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

March 22, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending a current restraint period and establishing limits for a new agreement period.

EFFECTIVE DATE: March 28, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Memorandum of Understanding dated March 14, 1989.

During recent negotiations between the Governments of the United States and the United Arab Emirates, agreement was reached to establish a Bilateral Textile Agreement relating to trade in certain cotton and man-made fiber textile products, produced or manufactured in the United Arab Emirates and exported during three consecutive agreement periods beginning on January 1, 1989 and extending through December 31, 1991. A formal exchange of diplomatic notes will follow.

Under the terms of the Memorandum of Understanding dated March 14, 1989, the United States Government is establishing restraint limits for Categories 338/339, 340/640, 341/641, 347/348 and 352 for the twelve-month period which began on January 1, 1989 and extends through December 31, 1989. Goods exported prior to January 1, 1989 in Categories 338/339, 340/640, 341/641 and 347/348 and in excess of the previously established limits will be charged to the limits established for these categories over the life of the agreement.

As a result of the foregoing actions, limits for Categories 338/339, 340/640, 341/641 and 347/348, which are currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 44936, published on November 7, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 22, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of October 28, 1988 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in the United Arab Emirates and exported during the period which began on June 27, 1988 and extends through June 26, 1989.

Effective on March 28, 1989, you are directed to amend the restraint period to end on December 31, 1988. The limits shall remain the same. Goods exported in excess of the June 27, 1988 through December 31, 1988 period shall be charged to the limits established for the period beginning on January 1, 1989 and extending through December 31, 1989.

You are directed to charge 200 dozen to Category 641 for the June 27, 1988 through December 31, 1988 period. These charges are for goods imported during the period June 27, 1988 through November 6, 1988.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Memorandum of Understanding dated March 14, 1989 between the Governments of the United States and the United Arab Emirates; and in accordance with the provisions of Executive Order 11651 of March 3, 1982, as amended, you are directed to prohibit, effective on March 28, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the twelve-month period

which began on January 1, 1989 and extends through December 31, 1989, in excess of the following levels of restraint:

Category	12-mo. Limit [1]
338/339	350,000 dozen of which not more than 233,333 dozen shall be in Categories 338-S/339-S.[2]
340/640	230,000 dozen.
341/641	190,000 dozen.
347/348	260,000 dozen of which not more than 130,000 dozen shall be in Categories 347-T/348-T.[3]
352	200,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

[2] In Categories 338-S/339-S, only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0035, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005 in Category 338-S; and 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0020 in Category 339-S.

[3] In Categories 347-T/348-T, only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0035, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2030, 6211.20.1520, 6211.20.3010 and 6211.32.0040 in Category 347-T; and 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0040, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2030, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050 in Category 348-T.

Textile products in Category 352 which have been exported to the United States prior to January 1, 1989 shall not be subject to this directive.

Textile products in Category 352 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

These limits may be adjusted in the future under the provisions of the Memorandum of Understanding dated March 14, 1989 between the Governments of the United States and the United Arab Emirates.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-7270 Filed 3-23-89; 11:36 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting; Defense Manufacturing Board

AGENCY: Under Secretary of Defense (Acquisition), DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Office of the Under Secretary of Defense for Acquisition announces a forthcoming meeting of the Defense Manufacturing Board (DMB).

DATE: *Date and Time:* April 5, 1989, 0830-1730.

ADDRESS: Wright-Patterson Air Force Base, Dayton, OH. The agenda for the meeting will focus on the defense industrial and technology base.

FOR FURTHER INFORMATION CONTACT: Mrs. Sherry Fitzpatrick of the DMB Secretariat, (202) 695-7580.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 21, 1989.

[FR Doc. 89-7195 Filed 3-24-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Alternative Futures Task Force will meet April 20, 1989 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to begin analysis of matters as defined in the terms of reference. The entire agenda for the meeting will consist of discussions of the full range of current political and military developments within the Soviet Union and the Warsaw Pact, drawing on sensitive intelligence sources and discussing possible U.S. policies as a response to and in light of those developments. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: March 20, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-7129 Filed 3-24-89; 8:45 am]

BILLING CODE 3810-AE-M

Board of Visitors to the United States Naval Academy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet 10 April 1989, at the U.S. Naval Academy, Annapolis, Maryland. The session, which is open to the public, will commence at 8:30 a.m. and terminate at 12:00 p.m., 10 April 1989, in Room 301, Rickover Hall.

The purpose of the meeting is to make inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic method of the Naval Academy.

For further information concerning this meeting contact: Captain John W. Renard, U.S. Navy, Retired, Secretary of the Board of Visitors, Dean of Admissions, United States Naval Academy, Annapolis, Maryland 21402-5017.

Date: March 20, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-7130 Filed 3-24-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.165]

Extension of Closing Dates for New Awards Under the Magnet Schools Assistance Program for Fiscal Year 1989

AGENCY: Department of Education.

ACTION: Notice extending the closing date for new awards under the Magnet

Schools Assistance Program for fiscal year (FY) 1989.

SUMMARY: On February 2, 1989, the Department of Education published in the **Federal Register** a notice inviting applications under the Magnet Schools Assistance Program for FY 1989. The purpose of this notice is to extend the closing date for transmittal of applications from March 17, 1989 to April 3, 1989, to provide applicants additional time to submit applications. Applicants that have already submitted applications will be able to supplement or revise their applications up to April 3, 1989. Three copies of any supplementary information or of the revised application must be received by the Application Control Center by April 3, 1989. The Intergovernmental Review date is also extended from May 16, 1989 to June 5, 1989.

Applicants should note that § 280.10(c) of the regulations requires a local educational agency that is implementing a non-voluntary desegregation plan to have approval for any modification of its desegregation plan, from the court, agency, or official that originally approved the plan. A previously approved desegregation plan that does not include the magnet schools for which a local educational agency is seeking assistance under this program must be modified to include the magnet schools component, and the modified plan with the magnet schools component must be approved by the court, agency, or official that originally approved the plan. All modifications to approved desegregation plans must be approved by the appropriate court, agency, or official by May 1, 1989. Proof of such approval must be submitted to the Department by May 5, 1989.

FOR APPLICATIONS OR INFORMATION CONTACT: Steven L. Brockhouse, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2067, FOB #6, Washington, DC 20202–6440. Telephone (202) 732–4358.

Program Authority: 20 U.S.C. 3021–3032.

Dated: March 23, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89–7267 Filed 3–24–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act (NEPA); Amendments to the Guidelines

AGENCY: Department of Energy.

ACTION: Notice of amendments to the Department of Energy's NEPA guidelines.

SUMMARY: The Department of Energy (DOE) herewith amends section D of its NEPA guidelines by adding to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas under section 3 of the Natural Gas Act, in cases not involving new construction. A categorical exclusion is a class of DOE action which normally does not require the preparation of either an environmental impact statement (EIS) or environmental assessment (EA). The DOE also hereby amends its NEPA guidelines to change the classification in section D of approval or disapproval of an import/export authorization involving minor new construction from the type of actions normally requiring preparation of an EIS to the type of actions normally requiring preparation of an EA but not necessarily an EIS.

DATE: Effective March 27, 1989.

FOR FURTHER INFORMATION CONTACT:

Carol Borgstrom, Director, Office of NEPA Project Assistance, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Rm 3E–080, Washington, DC 20585, (202) 586–4600.

William Dennison, Acting Assistant General Counsel for Environment, GC–11, U.S. Department of Energy, 1000 Independence Avenue, SW., Rm 6A–113, Washington, DC 20585, (202) 586–6947.

SUPPLEMENTARY INFORMATION: On December 15, 1987, the Department of Energy (DOE) published in the **Federal Register** (52 FR 47662) its National Environmental Policy Act (NEPA) Guidelines. On August 9, 1988 (53 FR 29934), DOE published a notice of proposed changes to section D of its NEPA Guidelines by adding to the list of categorical exclusions in section D, the approval or disapproval of an import/export authorization for natural gas under section 3 of the Natural Gas Act, in cases not involving new construction. In addition, the DOE proposed to change the classification in section D of approval or disapproval of an import/export authorization involving minor new construction from the type of actions normally requiring preparation of an EIS to the type of actions normally requiring preparation of an EA but not necessarily an EIS.

Publication of this notice commenced a 30-day comment period during which public comment was invited. One timely comment and one late comment were received. The timely comment supported the proposed amendments and the concept that eliminating the regulatory burden of unwarranted environmental studies would reduce the cost of energy supplies. This comment noted that if the Federal Energy Regulatory Commission (FERC) has already prepared an EIS or EA, the DOE should be able to rely on the FERC's conclusions and avoid unnecessary duplication of agency work. DOE agrees with this comment, and in the past has relied on FERC-prepared documents to facilitate its NEPA compliance. DOE has, after an independent review, adopted a number of FERC EA's and used them to support findings of no significant impact, and, in one instance, was a cooperating agency for a FERC EIS.

DOE also has elected to address the late comment, which urged that LNG projects not involving facility construction or the significant expansion of such facilities should not require either an EA or an EIS. DOE believes that experience is the most reliable basis for determining whether a class of action normally requires further documentation, and the extent of analysis and documentation required. As noted in the proposed modification of the NEPA guidelines, none of the import/export cases processed since the inception of the DOE in 1977 through May 31, 1988, not involving new construction, were found to have a significant effect on the human environment. Further, most of the nine new construction cases processed involved relatively minor new construction, such as construction of a relatively short pipeline or expanding an existing pipeline by adding new connecting looping or compression, or converting an interstate oil pipeline to an interstate natural gas pipeline using an existing right-of-way. These cases required preparation of an EA but not an EIS. Conversely, the two cases processed over the past ten years that did result in preparation of an EIS involved major new construction, i.e., in one case, construction of 36 miles of pipeline looping and a new gas-fired combined cycle powerplant, and in the other case, 257 miles of pipeline looping in five States plus related facilities.

DOE believes that this history of performance is sufficient basis to raise the rebuttable presumption necessary to establish a categorical exclusion under which approval or disapproval of an import/export authorization for natural gas (including LNG) under section 3 of the NGA would normally not require preparation of either an EIS or an EA where new construction is not involved. DOE also believes that the same

performance history is sufficient to raise the presumption that natural gas import/export authorization actions under section 3, involving relatively minor new construction, would require preparation of an EA but not necessarily an EIS. This would include actions involving relatively minor expansion of LNG facilities. DOE's experience does not provide a basis upon which to classify such LNG actions differently from other natural gas cases involving minor new construction as suggested by one commentor. Major pipeline construction, or construction of LNG terminals, regasification or storage facilities, or other related facilities; or the significant expansion of such facilities, pipelines or LNG terminals, will continue to be classified as actions normally requiring an EIS.

The classification of particular actions under section D only raises a presumption as to what environmental documentation and analysis is required. Each action will be evaluated on a case-by-case basis to determine environmental effects and the applicable NEPA procedural requirements.

The DOE has consulted with the Council on Environmental Quality (CEQ) regarding these amendments to section D of DOE's NEPA guidelines, in accordance with 40 CFR 1507.3. CEQ had no objection to the proposed amendments. Therefore, DOE hereby adopts the proposed amendments to section D of its NEPA guidelines effective immediately.

Issued in Washington, DC, on March 7, 1989.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

The DOE NEPA Guidelines are hereby amended in Section D with respect to natural gas actions and functions to read as follows:

DOE NEPA GUIDELINES

Section A—[no change]
Section B—[no change]
Section C—[no change]
Section D—Typical Classes of Actions
* * * * *

CLASSES OF ACTIONS GENERALLY APPLICABLE TO AUTHORIZATIONS TO IMPORT/EXPORT NATURAL GAS PURSUANT TO SECTION 3 OF THE NATURAL GAS ACT

Normally do not require EA's or EIS's	Normally requires EA's but not necessarily EIS's	Normally requires EIS's
Approval of new authorization or amendment of existing authorization which does not involve new construction but only requires operational changes, such as an increase in natural gas throughput, change in transportation or change in storage operations.	Approval of disapproval of an application involving minor new construction, such as a relatively short pipeline, adding new connections, looping or compression to an existing natural gas pipeline or converting an existing oil pipeline to a natural gas pipeline using the same right-of-way.	Approval of disapproval of an application involving major new natural gas pipeline construction or related facilities, such as construction of new liquid natural gas (LNG) terminals, regasification or storage facilities; or a significant expansion of an existing pipeline or related facility, or LNG terminal, regasification or storage facility

[FR Doc. 89-7229 Filed 3-24-89; 8:45 am]
BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $199.6 million, plus accrued interest, in crude oil violation amounts obtained from Getty Oil Company, Case No. KEF-0124. The OHA has determined that the funds will be distributed in accordance with the January 18, 1989 Order of the United States District Court for the District of Delaware, as well as the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Application for refund must be filed by October 31, 1989, and should be addressed to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the final procedures that the DOE has formulated to distribute crude oil overcharge funds obtained from Getty Oil Company. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has decided to distribute these funds in accordance with the January 18, 1989 Order of the United States District Court for the District of Delaware and the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Refunds to the states will be distributed in proportion to each state's consumption or petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund must be filed by October 31, 1989, and should be sent to the address set forth at the beginning of this notice. The information which claimants should include in their applications is explained in the Decison, which immediately follows. Any claimant that has already filed a crude oil refund application need not file again.

Date: March 21, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 21, 1989.

Decision and Order

Implementation of Special Refund Procedures

Name of Firm: Getty Oil Company.
Date of Filing: January 31, 1989.
Case Number: KEF-0124.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement refund procedures to distribute funds received as a result of enforcement proceedings. 10 CFR

205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed a Petition for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from Getty Oil Company (Getty). Getty remitted these funds to the United States District Court for the District of Delaware as restitution for its violations of the crude oil producer price regulations formerly codifed in 10 CFR Part 212. By Order of Disbursement of the district court dated January 18, 1989, $198.7 million was transferred to the DOE for ultimate distribution to the states, the federal government and individual claimants. An additional $895,697.92 in Getty overcharge funds was transferred to the DOE by Supplemental Disbursement Order of the court dated February 22, 1989.[1] Two million dollars in interest has accrued on these amounts as of March 13, 1989. This Decision and Order establishes procedures for distributing these funds in accordance with the district court's Order.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from Getty, and have determined that such procedures are appropriate.

I. Background

On August 12, 1976, the Deputy Administrator for Compliance of the Federal Energy Administration issued a Remedial Order to Getty, finding the firm in violation of the crude oil producer price regulations. The DOE's Office of Administrative Review, the OHA's predecessor, affirmed the Remedial Order on appeal and ordered Getty to remit $85 million plus interest as restitution for its violations. *Getty Oil Co.*, 1 DOE ¶ 80,102 (1977). After determining that "persons adversely affected by the Getty overcharges cannot be identified by reasonable measures," the DOE concluded that the Getty overcharges should be paid to the United States Treasury, because such a remedy would compensate "the ultimate victims of Getty's unlawful conduct: the public at large." *Id.* at 80,537.

The United States District Court for the District of Delaware affirmed the DOE's Decision as to all substantive issues, including the payment of overcharges to the Treasury. *Getty Oil Co.* v. *DOE*, 569 F. Supp. 1204 (D. Del. 1983). In 1984, the Temporary Emergency Court of Appeals (TECA) affirmed that ruling regarding Getty's liability, but remanded the question of appropriate remedy to the district court. *Getty Oil Co.* v. *DOE*, 749 F.2d 734 (TECA 1984), *cert. denied*, 469 U.S. 1209 (1985). TECA directed the district court to hold the overcharge funds in an interest-bearing account, and ordered the DOE to reconsider the proper remedial distribution of the funds, taking into account the rights of any party to the funds. *Id.* at 739.

Subsequently, on July 7, 1986, the United States District Court for the District of Kansas approved the Settlement Agreement for distribution of $1.4 billion in crude oil overcharge funds resulting from the Stripper Well Litigation. *In Re: The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan. 1986). Pursuant to that Agreement, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) ("the MSRP"). The MSRP provides that crude oil overcharge funds in the DOE escrow at the time of the Agreement, as well as crude oil funds obtained by the DOE in other pending administrative and judicial proceedings, would be divided among the states, the federal government and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds are reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are disbursed equally to the states and federal government for indirect restitution. The Stripper Well Agreement expressly states that the MSRP shall apply to any funds obtained in the Getty litigation "to the extent that the funds arising out of such matters are determined to be Alleged Crude Oil Violations funds." Stripper Well Agreement at ¶III.B.6, 6 Fed. Energy Guidelines ¶90,509 at 90,662.

On July 17, 1986, the DOE completed its reconsideration on remand of the Getty proceeding, and recommended to the Delaware District Court that the Getty overcharge funds were crude oil violation amounts which should be disbursed on the same basis as set forth in the Stripper Well Agreement. *Getty Oil Co.*, 14 DOE ¶83,033 at 86,284 (1986). That is, 80 percent of the funds would be divided equally between the federal government and the states, and 20 percent would be reserved for restitution to individual claimants. Claims for direct restitution would be administered under Subpart V pursuant to the MSRP. *Id.* at 86,283–84.

On February 16, 1988, the states and the DOE filed a Joint Stipulation on Disbursement with the Delaware District Court. That Stipulation recommended that the court adopt the remedy suggested by the DOE as the appropriate disposition of the Getty overcharge funds. In a Memorandum Opinion dated December 28, 1988, the court adopted the remedy proposed in the DOE's 1986 recommendation and approved the Joint Stipulation, finding it "reasonable, equitable and fair." *Gety Oil Co. v. DOE*, 3 Fed. Energy Guidelines ¶26,611 at 26,964 (D. Del. 1988) (*Getty II*). The actual order transferring the Getty funds to the DOE for disbursement according to the Subpart V regulations was dated January 18, 1989. It directed the DOE to distribute 40 percent of the Getty overcharge funds to the states, and 40 percent to the DOE. The remaining 20 percent of the funds were to be set aside for distribution to claimants pursuant to the Stripper Well Agreement and the MSRP.

II. The Proposed Decision and Order

On February 2, 1989, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the crude oil violation amounts obtained from Getty. The OHA tentatively concluded that the Getty funds should be distributed in accordance with the January 18, 1989 Order of the Delaware District Court. Accordingly, the OHA proposed to reserve initially 20 percent of the crude oil violation amounts for direct restitution to applicants who claim that they were injured by crude oil violations. The remaining 80 percent of the funds would be distributed to the states and the Federal Government for indirect restitution. After all valid claims are paid, any remaining funds in the claims reserve also would be divided

[1] The latter funds initially were retained by the district court for possible payment of an administrative assessment fee. However, the Administrative Office of the United States Courts suspended the assessment of such fees, allowing the court to transfer those funds to the DOE for ultimate distribution pursuant to its January 18, 1989 Order.

between the states and the Federal Government. The Federal Government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the PD&O, the OHA proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by crude oil overcharges. The PD&O stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry could use a presumption that they absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, derived by dividing the Getty overcharge funds by the total consumption of petroleum products in the United States during the period of price controls. Comments were solicited regarding the tentative distribution process set forth in the PD&O.

III. Discusson of the Comments Received

In response to the PD&O, the OHA received comments from Philip P. Kalodner as counsel for six electric utilities, 14 foreign-flag shipping companies, and four pulp and paper manufacturers. Kalodner's clients are all potential recipients of crude oil refunds. In his comments, Kalodner contends that the 20 percent reserve for claimants will be insufficient to satisfy all of the legitimate claims that have been or will be filed in these proceedings. Kalodner recognizes that, due to the district court's Order of Disbursement, "the 20% limitation cannot be eliminated by the OHA on its own authority." Kalodner comments at 1. However, Kalodner suggests that the OHA "make application to the District Court to modify its distribution order" so that the OHA can withhold all of the Getty funds for potential claimants. *Id.* at 2. According to Kalodner, "it is incumbent upon OHA" to file such a motion because the district court "relied upon OHA in determining to impose the 20% limitation." *Id.*

Kalodner has advanced similar arguments on numerous previous occasions, both before the OHA and the district court, and has been rebuffed at each juncture. Both the OHA and the district court have indicated that the Stripper Well Agreement permits the OHA to reserve no more than 20 percent of alleged crude oil violation amounts for direct refunds to injured claimants. *See, e.g., Getty II,* 3 Fed. Energy Guidelines at 26,963; *A. Tarricone, Inc.,* 15 DOE ¶ 85,495 at 88,893 (1987); *New York Petroleum, Inc.,* 18 DOE ¶ 85,435 at 88,701 (1988). Moreover, the OHA has noted that "there is absolutely no evidence to support Kalodner's assertion that the 20 percent reserve will be insufficient to pay claimants." *Amorient Petroleum Co.,* 18 DOE ¶ 85,595 at 88,977 (1989). We also have rejected Kalodner's contention that the DOE gave assurances as to the precise level of restitution that would be afforded to claimants from the crude oil overcharge funds. *Id.* at 88,976.

During the Getty litigation, Kalodner and representatives of other potential refund claimants were permitted to file briefs with the Delaware District Court as *amici curiae. Getty Oil Co. v. Doe,* 117 F.R.D. 540 (D. Del. 1987). In their submissions to the court, *amici* raised the same contentions concerning the claims reserve as Kalodner has advanced in this proceeding. The district court rejected these contentions in all regards, stating:

> Rewriting the *Stripper Well* Agreement, as *amici* suggest, to provide an unlimited portion of the fund for an individual claims process would harm the true victim of the overcharges, the consuming public. Immediate indirect restitution of 80% of the funds would assure that the bulk of the money would presently benefit all citizens in an equitable manner* * *. At this late date, all parties would best be served by the equitable compromise of paying 80% of the fund out immediately while retaining the remaining 20% for individual claimants. This remedy avoids further administrative delay, costs, and confusion.
>
> 3. Fed. Energy Guidelines at 26,963.

We wholeheartedly agree with the district court and once again reject Kalodner's claims to the contrary.

IV. The Refund Procedures

A. Refund Claims. After considering the comments received, we have concluded that the $199.6 million in Getty crude oil violation amounts covered by this Decision, plus the $2 million in interest which has accrued on that amount as of March 13, 1989, should be distributed in accordance with the January 18, 1989 order of the district court and the crude oil refund procedures previously discussed. As noted above, we will reserve initially the full 20 percent of the crude oil violation amounts, or $39.92 million plus interest, for direct refunds to claimants in accordance with the directive of the district court. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *MAPCO, Inc.,* 15 DOE ¶ 85,097 (1986); *Mountain Fuel Supply Co.,* 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following Subpart V precedent, reasonable estimates of purchase volumes may be submitted. *Greater Richmond Transit Co.,* 15 DOE ¶ 85,028 at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of price controls. *See Tarricone,* 15 DOE at 88,893–96. The end-user presumption of injury is rebuttable, however. *Berry Holding Co.,* 16 DOE ¶ 85,405 at 88,797 (1987). If an interested party submits evidence which is of sufficient weight to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury. *See New York Petroleum,* 18 DOE at 88,701–03.

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the OHA Report to the district court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under Subpart V. *Boise Cascade Corp.,* 16 DOE ¶ 85,214 at 88,411, *reconsideration denied,* 16 DOE ¶ 85,495, *aff'd sub nom. In Re: The Department of Energy Stripper Well Exemption Litigation, 3 Fed. Energy Guidelines ¶ 26,613 (D. Kan. 1987).*

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amounts involved in this determination ($199.6 million) by the total consumption of

petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868 n.4. This yields a volumetric refund amount of $0.00009876 per gallon.[2]

Refund applications submitted pursuant to this Decision must be postmarked no later than October 31, 1989, the deadline established in *World Oil Co.*, 17 DOE ¶ 85,568 (1988). As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See Ernest A. Allerkamp*, 17 DOE ¶ 85,079 at 88,176 (1988). Any party that has previously submitted a refund application in crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date. The volumetric refund amount will be increased as additional crude oil overcharge funds are received in the future. Applicants may be required to submit additional information to document their refund claims for these future funds. Notice of any additional amounts available in the future will be published in the **Federal Register**.

To apply for a crude oil refund, a claimant should submit an application for refund. That application should contain all of the following information:

(1) Identifying information including the applicant's name, address, and social security number or employer identification number, an indication whether the applicant is a corporation, the name and telephone number of a person to contact for any additional information, and the name and address of the person who should receive the refund check;

(2) A short description of the applicant's business and how it used petroleum products. If the applicant did business under more than one name, or a different name during the period of price controls, the applicant should list these names;

(3) If the applicant's firm is owned by another company, or owns other companies, a list of those other companies' names and their relationships to the applicant's firm;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973, through January 27, 1981, the number of gallons of each product purchased, and the total number of gallons for all products purchased on which the applicant bases its claim;

(5) An explanation of how the applicant obtained the volume figures above, and an explanation of its method of estimation if the applicant used estimates to determine its purchase volumes;

(6) A statement that neither the applicant, its parent firm, affiliates, subsidiaries, successors nor assigns has waived any right it may have to receive a refund in these cases (i.e. by having executed and submitted a valid waiver pursuant to anyone of the escrow accounts established pursuant to the Stripper Well Agreement);

(7) If the applicant is not an end-user whose business is unrelated to the petroleum industry, a showing that the applicant was injured by the alleged overcharges (i.e. that the applicant did not pass through the overcharges to its own customers); and

(8) If the applicant is a regulated utility, a certification that it will notify the state utility commission of any refunds received, and that it will pass on the entirety of its refunds to its customers.

All applications should be typed or printed and clearly labelled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application, which should be mailed to the following address:

Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Although an applicant need not use any special application form to apply for a crude oil refund, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

B. Payments to the States and Federal Government. Under the terms of the MSRP, the remaining 80 percent of the $199.6 million in principal, plus $2 million in interest, in Getty crude oil violation amounts subject to this Decision, or $161.28 million, should be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to segregate $161.28 million and transfer one-half of that amount, or $80.64 million, into an interest-bearing subaccount for the states, and one-half into an interest-bearing subaccount for the federal government. In the near future, we will issue a Decision and Order directing the DOE's Office of the Controller to make the appropriate disbursements to the individual states from their respective subaccount. This future Order is necessary to improve our ability to track the various disbursements to the states. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It is therefore ordered That:

(1) Applications for Refund from the crude oil overcharge funds remitted by Getty Oil Company may now be filed.

(2) All applications submitted pursuant to paragraph (1) above must be filed no later than October 31, 1989.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer, pursuant to Paragraphs (4), (5) and (6) below, all of the funds from the Getty Oil Company subaccount, Account Number RGEP000A1Z.

(4) The Director of Special Accounts and Payroll shall transfer $80,649,882.35 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues on that amount from March 13, 1989 to the date of the transfer, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer the same amount of funds as that indicated in paragraph (4) above into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The Directof of Special Accounts and Payroll shall transfer $40,324,941.18 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues on that amount from March 13, 1989 to the date of transfer, into the subaccount denominated "Crude Tracking-Claimants 2," Number 999DOE008Z.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date: March 21, 1989.

[FR Doc. 89-7230 Filed 3-24-89; 8:45 am

BILLING CODE 6450-01-M

[2] The total volumetric refund amount approved in all proceedings finalized prior to an including *Wickett Refining Co.* was $0.0008805397. 18 DOE ¶ _____, No. KEF-0099, slip op. at 7 n.3 (February 16, 1989). When the volumetric approved in this Decision is added to the previously approved amounts, the current total per-gallon refund is $0.0009792997. This volumetric refund will be increased as additional crude oil violation amounts are received in the future.

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3543-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 6, 1989 through March 10, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No.: D-COE-K02006-CA, Rating No Comment, Shell Hercules Project, Oil and Gas Resources Development, Section 10 and 404 Permits, Santa Barbara Channel, Santa Barbara County, CA.

Summary: EPA did not provide comments to the Corps on the draft EIS. It is EPA's understanding that the permit application for the proposed project has been withdrawn by the project applicant, and that the Army Corps has suspended the environmental review process because no permit application is technically pending.

ERP No.: D-IBR-K31013-AZ, Rating EC2, San Xavier Irrigation System Development Project, Design Approval, Construction and Operation, Funding, Tohono O'odham Nation, San Xavier District, AZ.

Summary: EPA expressed environmental concerns primarily because the draft EIS did not contain an adequate discussion of compliance with EPA's Act Section 404(b)(1) Guidelines which evaluate the discharge of dredged or fill material into waters of the United States. Two areas of concern involved the identification of appropriate mitigation measures and a discussion of whether practicable alternatives are available to avoid or minimize discharges to waters of the United States.

ERP No.: D-IBR-K31014-CA, Rating E02, Kellogg Unit Reformulation Study, Contra Costa Canal Intake Relocation, Approval and Implementation, Contra Costa County, CA.

Summary: EPA raised objections about the impacts of the preferred alternatives, therefore rated the proposed action as EO-2. EPA expressed concerns regarding other alternative cumulative impacts, impacts of the potential increase of water diversion from the Sacramento-San Joaquin Delta, and the loss of riparian and wetlands habitats. EPA recommended that a separate EIS for the Highline Canal be prepared since it appears to be closely associated with the construction of offstream reservoir facilities at Los Vaqueros or Kellogg reservoir sites, which were not analyzed in the Kellogg Unit Reformulation Study draft EIS.

Final EISs

ERP No.: FS-BLM-K08005-00, Devers-Palo Verde No. 2, 500 kV Transmission Line Project, Construction and Operation and Right-of-Way Grant, Additional Alternatives, Riverside County, CA and Yuma and Maricopa Counties, AZ.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the agency.

ERP No.: F-BLM-K65115-AZ, Phoenix Resource Area Management Plan, Implementation, Apache, Navajo, Gila, Maricopa, Pima, Pinal, Santa Cruz and Yavapai Counties, AZ.

Summary: EPA requested that BLM's Record of Decision contain commitments to ensure watershed protection and compliance with superfund.

Dated: March 22, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-7223 Filed 3-24-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1772]

Petitions for Reconsideration and Clarification Applications for Review and Motions for Stay of Actions in Rule Making Proceedings March 22, 1989-G4.

Petitions for reconsideration and clarification, applications for review and motions for stay have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions and applications must be filed April 12, 1989. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing opposition has expired.

Subject: MTS and WATS Market Structure; Amendment of Part 67 of the Commission's Rules and Establisment of A Joint Board (CC Docket Nos. 78-72 & 80-286); Number of petitions received: 2.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-7145 Filed 3-24-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 89-1029]

FSLIC Insurance Premium

Date: March 15, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), has adopted a resolution pursuant to which the Corporation orders the assessment against each insured institution of an additional premium for FSLIC insurance in an amount equal to one quarter of one-eigth of one percent (one thirty-second of one percent) of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1988.

EFFECTIVE DATE: March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mary A. Creedon, Acting Executive Director, FSLIC, (202) 416-2029; or Deborah Siegel, Attorney, Office of General Counsel (202) 906-6848, Federal Home Loan Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Whereas, The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), may authorize the Corporation, pursuant to Section 404(c) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1727(c) (1982), to assess against each institution the accounts of which are insured by the Corporation pursuant to Section 403 of the NHA, 12 U.S.C. 1726 (1982) ("insured institution"), additional premiums for such insurance until the amount of such premiums equals the amount of all losses and expenses of the

Corporation, provided that the total amount so assessed in any one year against any insured institution shall not exceed one eighth of one per centum of the total amount of the accounts of the insured members of such institution and provided further that the amount of the additional premium for the calendar year 1989 may not exceed one-sixteenth of one percentum of the total amount of the accounts of the insured members of such institution unless the Bank Board determines that severe pressures on the Corporation exist which necessitate an infusion of additional funds; and

Whereas, The Bank Board, as operating head of the Corporation, by Resolution No. 85–142, dated February 22, 1985, by Resolution No. 85–437, dated June 5, 1985, by Resolution No. 85–770, dated August 28, 1985, by Resolution No. 85–1142, dated December 9, 1985, by Resolution No. 86–213, dated March 6, 1986, by Resolution No. 86–582, dated June 10, 1986, by Resolution No. 86–941, dated September 2, 1986, by Resolution No. 86–1253, dated December 15, 1986, by Resolution No. 87–281 dated March 16, 1987, by Resolution No. 87–610 dated May 27, 1987, by Resolution No. 87–950 dated September 9, 1987, by Resolution No. 87–1254 dated December 14, 1987, by Resolution No. 88–256 dated April 7, 1988, by Resolution No. 88–537 dated June 29, 1988, by Resolution No. 88–981 dated September 15, 1988, and by Resolution No. 88–1267 dated December 7, 1988, ordered assessments against each insured institution of an additional premium for insurance in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1984, for the first assessment, as of March 31, 1985, for the second, as of June 30, 1985, of the third, as of September 30, 1985, for the fourth, as of December 31, 1985, for the fifth, as of March 31, 1986, for the sixth, as of June 30, 1986, for the seventh, as of September 30, 1986, for the eighth, as of December 31, 1986, for the ninth, as of March 31, 1987, for the tenth, as of June 30, 1987, for the eleventh, as of September 30, 1987, for the twelfth, as of December 31, 1987, for the thirteenth, as of March 31, 1988, for the fourteenth, as of June 30, 1988, for the fifteenth, and as of September 30, 1988 for the sixteenth; and

Whereas, The Bank Board has considered memoranda of the Corporate Accounting Branch and the Chief Financial and Administrative Officer, Office of the FSLIC, (a copy of which memoranda are in the Minute Exhibit file), describing the impact of the collection of the additional premiums for insurance assessed pursuant to Resolution No. 85–142, dated February 22, 1985, Resolution No. 85–437, dated June 5, 1985, Resolution No. 85–770, dated August 28, 1985, Resolution No. 85–1142, dated December 9, 1985, Resolution No. 86–213, dated March 6, 1986, Resolution no. 86–582, dated June 10, 1986, Resolution No. 86–941, dated September 2, 1986, Resolution No. 86–1253, dated December 15, 1986, Resolution No. 87–281, dated March 16, 1987, Resolution No. 87–610 dated May 27, 1987, Resolution No. 87–950 dated September 9, 1987, Resolution No. 87–1254 dated December 14, 1987, Resolution No. 88–256 dated April 7, 1988, Resolution No. 88–537 dated June 29, 1988, Resolution No. 88–981 dated September 15, 1988, and Resolution No. 88–1267 dated December 7, 1988, upon the Corporation's insurance reserves:

Now, therefore, it is resolved, That on the basis of the administrative record, the Bank Board finds and determines that the Corporation has incurred substantial losses during calendar years 1981 through the fourth quarter of 1988; and

Resolved further, That the Bank Board finds and determines that:

1. Losses and expenses incurred by the Corporation, as defined in Resolution No. 85–142, require the assessment of additional insurance premiums pursuant to section 404(c) of the NHA in addition to the additional insurance premiums assessed pursuant to Resolutions No. 85–142, No. 85–437, No. 85–770, No. 85–1142, No. 86–213, No. 86–582, No. 86–941, No. 86–1253, No. 87–281, No. 87–610, No. 87–950, No. 87–1254, No. 88–256, No. 88–537, No. 88–981, and No. 88–1267 in order to maintain the insurance reserves of the Corporation at a level adequate to meet in part the Corporation's losses and expenses and to protect the insured members of insured institutions;

2. Severe pressures on the Corporation exist which necessitate an infusion of additional funds;

3. Postponement of a reduction in the assessment of an additional premium, as provided in section 404(c)(2) of the NHA, will improve the financing environment for selling obligations of the Financing Corporation organized pursuant to the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987;

4. It is appropriate, therefore, to provide for the assessment of an additional insurance premium at this time, pursuant to section 404(a)(2) and 404(c)(1) of the NHA, by order of the Corporation; and

Resolved further, That the Corporation hereby orders the assessment against each insured institution of an additional premium for insurance for the first quarter of 1989, in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of such insured institution determined as of December 31, 1988; and

Resolved further, That the additional insurance premium assessed pursuant to this Resolution shall be payable on or about April 4, 1989; and

Resolved further, That the Executive Director or the Principal Deputy Director of the FSLIC, or a designee of either of them ("Director"), shall determine the amount of the additional premium due, including an offset of one quarter of twenty percent (five percent) of each insured institution's pro rata share of the statutorily prescribed amount as provided in section 404(e)(2) of the NHA, to be paid on or about April 4, 1989, by each insured institution, and shall notify each insured institution of such amount at least fifteen (15) days prior to the date such amount is due; and

Resolved further, That the Director, on behalf of the Corporation, is hereby authorized to take all other actions necessary or appropriate to determine and collect the additional insurance premium authorized and ordered by this Resolution; and

Resolved further, That the Secretary shall forward this Resolution for publication in the **Federal Register.**

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–7151 Filed 3–24–89; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, on or before April 6, 1989. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before

communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010828–002.

Title: City of Los Angeles Terminal Agreement.

Parties: City of Los Angeles, Overseas Shipping Company (Overseas).

Synopsis: The Agreement reflects the name change from Overseas Terminal Company, Inc., to Overseas Shipping Company. The Agreement also describes the reconfigured area granted to Overseas at the "Seaside Terminal" complex and adjusts the compensation to correspond to the area granted. The Agreement also eliminates an increase in the automobile wharfage scheduled for the third year of the Agreement. The Agreement further allows the parties to readjust the premises and compensation under specific terms of the Agreement and if readjusted it provides that the Agreement will be further amended.

Agreement No.: 224–200229.

Title: Manchester Terminal Corporation, Terminal Agreement.

Parties: Manchester Terminal Corporation (MTC), Scott Marine Services, Inc. (SMS).

Synopsis: The Agreement provides for SMS to load, unload and render other related services to cargo and containers moving through MTC's Port of Houston facility. It also provides that SMS will pay MTC $25.00 for each container SMS receives from or delivers to an inland carrier at the facility and for each container it receives from a vessel and subsequently delivers to a vessel at the facility.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: March 22, 1989.

[FR Doc. 89–7217 Filed 3–24–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bank of Boston Corp.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a) or (f) of the Board's Regulation Y (12 CFR 225.23 (a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicted or the offices of the Board of Governors not later than April 12, 1989.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Boston Corporation,* Boston, Massachusetts; to acquire BancBoston Brokerage Inc. and Colbank Securities Ltd., Boston, Massachusetts, and thereby engage in the purchase and sale of gold and silver coins and bars solely as an agent for the account of customers.

Board of Governors of the Federal Reserve System, March 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–7139 Filed 3–24–89; 8:45 am]

BILLING CODE 6210–01–M

Carolina First Bancshares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89–4678) published at page 8598 of the issue for Wednesday, March 1, 1989.

Under the Federal Reserve Bank of Richmond, the entry for Carolina First BancShares, Inc. is amended to read as follows:

1. *Carolina First BancShares, Inc.,* Lincolnton, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Lincoln Bank of North Carolina, Lincolnton, North Carolina, which engages in general insurance agency activities through a wholly-owned subsidiary of the Bank.

Comments on this application must be received by April 10, 1989.

Board of Governors of the Federal Reserve System, March 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–7144 Filed 3–24–89; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control; Thomas W. Colbert, et al; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 10, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Thomas W. Colbert,* Forest, Mississippi; to acquire 31.61 percent of the voting shares of The Metropolitan Corporation, Biloxi, Mississippi, and thereby indirectly acquire Metropolitan National Bank, Biloxi, Mississippi.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Steven L. Wilson,* Van Horne, Iowa; M.C. Larson, Keystone, Iowa; Ernest A. Tippie, Cedar Rapids, Iowa; George M. Herger, Vinton, Iowa; Jean A. Herger, Vinton, Iowa; Donald L. Franzenburg, Keystone, Iowa; Keith C. Wiese, Keystone, Iowa; Donald A. Gibney, Van Horne, Iowa; Donald F. Franzenburg, Keystone, Iowa; Brian J. Brown, Van Horne, Iowa; Keith A. Junge, Keystone, Iowa; Harold Ritscher, Keystone, Iowa; Richard Selken, Keystone, Iowa; Darold Sindt, Keystone, Iowa; and Robert E.

Drey, Des Moines, Iowa; to each acquire 6.67 percent, and, as a group acting in concert, to acquire 100 percent of the voting shares of Keystone Community Bancorporation, Keystone, Iowa, and thereby indirectly acquire Keystone Savings Bank, Keystone, Iowa.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Merle Artz,* Orleans, Nebraska, to acquire 16.7 percent; Wallace Broeker, Orleans, Nebraska, to acquire 8.3 percent; Merle Johnson, Orleans, Nebraska, to acquire 20.8 percent; Archie L. Tarkington, Oxford, Nebraska, to acquire 20.8 percent; Kurt Tarkington, Orleans, Nebraska, to acquire 25 percent; Jerome Witte, Orleans, Nebraska, to acquire 2.1 percent; Kenneth Witte, Orleans, Nebraska, to acquire 2.1 percent; and Edwin Witte, Orleans, Nebraska, to acquire 4.2 percent; of the voting shares of Republican Valley Investment Company, Red Cloud, Nebraska, and thereby indirectly acquire Republic Valley Bank, Orleans, Nebraska.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Arthur Temple,* Diboll, Texas; to acquire 11.1 percent of the voting shares of Diboll State Bancshares, Inc., Diboll, Texas, and thereby indirectly acquire Diboll State Bank, Diboll, Texas, and Peoples National Bank, Lufkin, Texas.

Board of Governors of the Federal Reserve System, March 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-7140 Filed 3-24-89; 8:45 am]

BILLING CODE 6210-01-M

First Chicago Corp.; Application To Engage de Novo in Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a) or (f) of the Board's Regulation Y (12 CFR 225.23 (a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to engage de novo in listed and unlisted nonbanking activities. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated and at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 10, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Chicago Corporation,* Chicago, Illinois; and Gary-Wheaton Corporation, Wheaton, Illinois; to engage *de novo* through Gary-Wheaton Investment Services, Inc., Wheaton, Illinois, in providing investment advice and securities brokerage services on a combined basis to both institutional and retail customers; and in providing investment and financial advice pursuant to § 225.25(b)(4) of the Board's Regulation Y. The provision of investment advice and securities brokerage services on a combined basis to institutional and retail customers has been previously approved by the Board. *See Bank of New England Corporation,* 74 Federal Reserve Bulletin 700 (1988); *Signet Banking Corporation,* 75 Federal Reserve Bulletin 34 (1989).

Board of Governors of the Federal Reserve System, March 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-7141 Filed 3-24-89; 8:45 am]

BILLING CODE 6210-01-M

Gateway Financial Corp., et al.; Formations of; Acquisitions by and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 14, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Gateway Financial Corporation,* Norwalk, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of Gateway Bank, a state chartered savings bank which offers Savings Bank Life Insurance and sells as agent credit related insurance.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Heritage Bancshares, Inc.,* Fort Myers, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage National Bank, Fort Myers, Florida, a *de novo* bank.

2. *SouthTrust Corporation,* Birmingham, Alabama; to merge with Sentry Bancshares Corporation, Roswell, Georgia, and thereby indirectly acquire Sentry Bank & Trust Company, Roswell, Georgia.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *New Ross Bancorp,* New Ross, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank, New Ross, Indiana.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Three Forks Bancorporation,* Three Forks, Montana; to acquire 10.99 percent of the voting shares of Citizens Bancshares, Inc., Bozeman, Montana. Comments on this application must be received by April 12, 1989:

Board of Governors of the Federal Reserve System, March 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-7142 Filed 3-24-89; 8:45 am]

BILLING CODE 6210-01-M

Woburn National Corp., et al.; Applications To Engage de Novo in Premissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1)) of the Board's Regulation Y (12 CFR 225.23(a)(1) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in disupte, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 12, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Woburn National Corporation,* Woburn, Massachusetts; to engage *de novo* in making commercial loans pursuant to § 225.25(b)(1)(iv) of the Board's Regulaton Y.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First Commerce Bancorp, Inc.,* Commerce, Georgia; to engage *de novo* through its subsidiary, First Life Insurance Company, Phoenix, Arizona, in underwriting, as reinsurer, credit life and credit disability insurance written in connection with extensions of credit by Applicant's credit extending affiliates, pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Phoenix, Arizona.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Three Forks Bancorporation,* Three Forks, Montana; to guarantee a loan made to Citizens Bancshares, Inc., Bozeman, Montana, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *OmniBancorp,* Denver, Colorado; to engage *de novo* through its subsidiary, Progressive Financial Services, Inc., Denver, Colorado, in operating a collection agency pursuant to § 225.25(b)(23) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-7143 Filed 3-24-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 030689 AND 031789

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN Number	Date terminated
Bain Capital Fund Limited Partnership, a new holding company not yet named ("Holding") a new holding company not yet named ("Holding")	89-1095	03/06/89
Calvin Klein Industries, Inc., Minnetonka Corporation, Minetonka Corporation	89-1097	03/06/89
Archive Corporation, Maynard Knapp and Alison Knapp, Maynard Electronics, Inc.	89-1147	03/06/89
UAL Corporation, Texas Air Corporation, Eastern Air Lines, Inc.	89-0479	03/07/89
Texas Air Corporation, UAL Corporation, United Air Lines, Inc.	89-0481	03/07/89
Ing. C. Olivetti & C., S.p.A., ISC Systems Corporation, ISC Systems Corporation	89-1061	03/07/89
The Williams Companies, Inc., CSX Corporation, CSX Communications, Inc.	89-1093	03/07/89
The Williams Companies, Inc., Southern New England Telecommunications Corporation, SNET FiberCom, Inc.	89-1096	03/07/89
ESCO Corporation, Brush Wellman, Inc., Bucyrus Blades, Inc.	89-1179	03/07/89
Oakville N.V., Tesoro Petroleum Corporation, Tesoro Petroleum Corporation	89-1074	03/08/89
Alltel Corporation, HWC Distribution Corp., HWC Distribution Corp.	89-1110	03/08/89
Thorn EMI plc, Stephen C. Swid, SBK Entertainment World, Inc.	89-1175	03/08/89
Milk Specialties Company, Koninklijke Wessanen N.V., Real Veal, Inc.	89-1180	03/08/89
Curtiss-Wright Corporation, International Minerals & Chemical Corporation,International Minerals & Chemical Corporation	89-1082	03/09/89
J. H. Whitney & Co., Oscar J. Breslow and Gertrude Breslow, R.A. Briggs and Company	89-1166	03/09/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 030689 AND 031789—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN Number	Date terminated
Taylor Voting Trust, Affiliated Publications, Inc., API Print Corporation	89-1177	03/09/89
Jordan Voting Trust, Affiliated Publications, Inc., API Print Corporation	89-1178	03/09/89
Jordan Voting Trust, Affiliated Publications, Inc., McCaw Cellular Communications, Inc.	89-1182	03/09/89
Taylor Voting Trust, Affiliated Publications, Inc., McCaw Cellular Communication, Inc.	89-1183	03/09/89
Michael Karfunkel, George Karfunkel, I.A.M. National Pension Fund, I.A.M. National Pension Fund	89-0535, (89-0536)	03/10/89, 3/10/89
George Karfunkel, I.A.M. National Pension Fund,I.A.M. National Pension Fund	89-0536	03/10/89
Inter-American Packaging, Inc., Armstrong Industries, Inc.Armstrong Industries, Inc.	89-1109	03/10/89
Reed International P. L. C., Argus Press Limited, Hospital Publications Division of Argus Press Holdings	89-1118	03/10/89
Memotec Data Inc., Concord Data Systems, Inc.,Concord Data Systems, Inc.	89-1184	03/10/89
Metropolitan Life Insurance Company, Igloo Holdings, Inc., Igloo Holdings, Inc.	89-1189	03/10/89
Mr. Yasuji Hatano, The Equitable Life Assurance Society of the U.S., The Equitable Life Assurance Society of the U.S.	89-1199	03/10/89
Adam Young, Knight-Ridder, Inc., Knight-Ridder Broadcasting, Inc.	89-1208	03/10/89
Cook Inlet Region, Inc., George N. Gillett, Jr., Gillett Broadcasting of Tennessee, Inc.	89-1211	03/10/89
Trust—Will of John Hay Whitney, George N. Gillett, Jr., Gillett Broadcasting of Tennessee, Inc.	89-1212	03/10/89
Lee R. Anderson, Sr., Laurence F. LeJeune, LeJeune Investment, Inc.	89-1225	03/10/89
Naamloze Vennootschap DSM, Mark IV Industries, Inc., Armtek Corporation	89-1229	03/10/89
Apparel America, Inc., Empire Industries, Inc., Mayfair Industries, Inc.	89-1231	03/10/89
Jan Ahlers, RPM Clothing, Inc., RPM Clothing, Inc.	89-1011	03/13/89
Norman M. Lear, Eastgate Theatre, Inc., Eastgate Theatre, Inc.	89-1092	03/13/89
Microsoft Corporation, The Santa Cruz Operation, Inc., The Santa Cruz Operation, Inc.	89-1112	03/13/89
Brambles Industries Limited, Environmental Systems Company, Environmental Systems Company	89-1148	03/13/89
A. Ahlstrom Corporation, Filtration Sciences, Inc., Filtration Sciences, Inc.	89-1149	03/13/89
Michael C. and Karen P. Cameron, Nestle, S.A., Carnation Company	89-1203	03/13/89
Robert M. Piccinini, The Kroger Co., Fry's Food Stores, Inc.	89-1068	03/14/89
Rockwell International Corporation, APV, PLC, APV Baker PMC, Inc. & Baker Perkins, plc	89-1114	03/14/89
Raleigh Berhad, SSMC Inc., SSMC Inc.	89-1167	03/14/89
Union Pacific Corporation, Trailer Train Co., Trailer Train Co.	89-1181	03/14/89
Golder, Thoma, Cressey Fund III Limited Partnership, Charter-Crellin, Inc., Charter-Crellin, Inc.	89-1251	03/14/89
Donald C. Graham, c/o Graham Engineering Corporation, Sonoco Products Company, Sonoco Products Company	89-1135	03/15/89
John J. Rigas, Mid Atlantic Network, Incorporated, Mid Atlantic Network, Incorporated	89-1150	03/15/89
Amer Group Ltd., WSGC Holdings, Inc., WSGC Holdings, Inc.	89-1188	03/15/89
The Home Group, Inc., Numerica Financial Corporation, Numerica Financial Services, Inc.	89-1214	03/15/89
The Procter & Gamble Company, Sundor Group Inc., Sundor Group Inc.	89-1218	03/15/89
KCA Acquisition Company, L.P., Alco Standard Corporation,Alco Standard Corporation	89-1091	03/16/89
Nestle S.A., Baxter International, Inc., Clinical Nutrition Holdings, Inc.	89-1117	03/16/89
St. Thomas Health Corporation, Akron City Hospital, Akron City Hospital	89-1165	03/16/89
Ply Gem Industries, Inc., SNE Enterprises Limited Partnership, SNE Enterprises Limited Partnership	89-1192	03/16/89
Stewart A. Resnick West, Hills Cooperative, Inc., a California corporation, West Hills Cooperative, Inc., a California corporation	89-1173	03/17/89
Stewart A. Resnick, West Valley Ranches, a California general partnership, West Valley Ranches, a California general partnership	89-1174	03/17/89
ITSA S.A., Houston Industries Incorporated, Primary Fuels Argentina, Inc.	89-1207	03/17/89
Integon Acquisition Corporation, Southmark Corporation, Integon Corporation	89-1222	03/17/89
International Heritage Fund, Keystone America High Yield Bond Fund, Keystone America High Yield Bond Fund	89-1234	03/17/89
Voting Trust of Hallmark Cards, Incorporated, Reynold V. Anselmo, The Seven Hills Television Company	89-1237	03/17/89
International Business Machines Corporation, JDN Enterprises, Inc., JDN Enterprises, Inc.	89-1240	03/17/89
Burnham Broadcasting Company, Limited Partnership, Knight-Ridder, Inc., Knight-Ridder Broadcasting, Inc.	89-1248	03/17/89
Frank J. Pasquerilla, c/o Crown American Corporation, ACCOR S.A., International and Williams Limited Partnership	89-1249	03/17/89
The Laurentian Mutual Management Corporation, Rushmore Mutual Life Insurance Company, Rushmore Mutual Life Insurance Company	89-1256	03/17/89
News-Press & Gazette Company, Knight-Ridder, Inc., Knight-Ridder Broadcasting, Inc.	89-1259	03/17/89
Jerral W. Jones, Bright & Company, Texas Stadium Corporation	89-1262	03/17/89
Lockheed Corporation, Rational, Rational	89-1263	03/17/89

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-7174 Filed 3-24-89; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Federal Advisory Committee on the Foley Square Project, New York, NY; Establishment

Establishment of Advisory Committee. This notice is published in accordance with provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) and adivises of the establishment of the General Services Administration's Federal Advisory Committee on the Foley Square Project, New York, NY. The Administrator of General Services has determined that establishment of this Committee is in the public interest.

Designation. Federal Advisory Committee on the Foley Square Project, New York, NY.

Purpose. The purpose of the Committee will be to advise the Source Selection Authority, the Regional Administrator of the General Services Administration's Region 2, in the evaluation of the Foley Square Project procurement including, but not limited to: (1) reviewing and evaluating offers received, as necessary; (2) providing the committee's views regarding specific offers received, including the basis for the views; and, (3) making recommendations of contract awards under the procurement to the Source

Selection Authority and Contracting Officer.

Contact for Information. For additional information, contact: Alan Greenberg, Project Director, General Services Administration, 26 Federal Plaza, New York, NY 10278, Tel: (212) 264–4282.

Dated: March 21, 1989.

Approved:

Richard G. Austin,

Acting Administrator.

FR Doc. 89–7153 Filed 3–24–89; 8:45 am]

BILLING CODE 6820–23–M

Federal Advisory Committee on the Foley Square Project Procurement, New York, NY; Meeting

Notice is hereby given that the General Services Administration's Federal Advisory Committee on the Foley Square Project, New York, NY, will meet on each working day of April (after April 12th), May, June, July and August, 1989, unless otherwise cancelled by the Chairman, in the Sixteenth Floor Conference Room of the Jacob K. Javits Federal Building, 216 Federal Plaza, New York, New York 10278. The purpose of the meeting is to review and evaluate the offers received and make award recommendations. The agenda for all meetings will relate to the evaluation of the offers received.

All meetings will be closed to the public because procurement sensitive matters, especially the pre-award evaluation, will be discussed. The exemptions for closing the meetings are cited in 5 U.S.C. 552(b)(c)(4) and (c)(9)(B) (Government in the Sunshine Act).

Questions regarding this meeting should be directed to: Alan Greenberg, Project Director, General Services Administration, 26 Federal Plaza, New York, NY 10278, Tel: (212) 264–4282.

Dated: March 21, 1989.

Approved:

Richard G. Austin,

Acting Administrator.

FR Doc. 89–7152 Filed 3–24–89; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Consensus Development Conference on Sunlight, Ultraviolet Radiation, and the Skin

Notice is hereby given of the NIH Consensus Development Conference on "Sunlight, Ultraviolet Radiation, and the Skin," sponsored by the National Institute of Arthritis and Musculoskeletal and Skin Diseases and in collaboration with the NIH Office of Medical Applications of Research. The conference will be held on May 8–10, 1989, in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Sunlight is essential for life as we know it, and some sunlight exposure is beneficial to the body. Overexposure to sunlight and artificial sources of ultraviolet light, however, has the potential for acute and chronic adverse effects on the skin and its functions. Some of these effects include the development of several forms of skin cancer, immune system alterations, damage to blood vessels in the skin, and premature aging of skin.

The ability to measure and quantify the effects of ultraviolet radiation on the skin has improved greatly in recent years. In the past decade, there also has been a dramatic change in the ability to protect the skin from ultraviolet radiation. More recently, there has been preliminary evidence presented indicating that some chronic effects of sunlight and ultraviolet exposure may be reversible through the use of prescription medications.

Considerable controversy remains, however, concerning the specific adverse effects cause by various wavelenghts of ultraviolet radiation, the magnitude of these effects, and potential strategies for their prevention and/or treatment.

The purpose of this conference will be to reach agreement on the most appropriate strategies for the prevention, and if possible, treatment of adverse effects of sunlight exposure and ultraviolet radiation on the skin. Key questions to be addressed are:

- What are the effects of sunlight on the skin?
- What are the sources of ultraviolet radiation, and is the extent of human exposure changing over time?
- What factors influence susceptibility to ultraviolet radiation?
- Can ultraviolet-induced changes be prevented? If so, how?
- Are sunlight-induced adverse skin alterations treatable and/or reversible? If so, how?
- What are the directions for future research?

On the final day of the meeting, the Consensus Panel chairman will read the draft statement to the conference audience and invite comments and questions.

Information on the program may be obtained from: Andrea Manning, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland (301) 468–6555.

Dated: March 20, 1989.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 89–7211 Filed 3–24–89; 8:45 am]

BILLING CODE 4140–01–M

Conference on Modeling in Biomedical Research; An Assessment of Current and Potential Approaches

Notice is hereby given of the NIH Conference on "Modeling in Biomedical Research: An Assessment of current and Potential Approaches," sponsored by the Division of Research Resources and the Division of Research Services in collaboration with the NIH Office of Medical Applications of Research. The conference will be held on May 1–3, 1989, in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

To emphasize the use of many types of models to solve basic biomedical questions, the conference will focus on two areas of great importance to the nation's health: Cardiovascular/pulmonary function (Monday, May 1) and diabetes (Tuesday, May 2).

At the cardiovascular/pulmonary function session, Dr. Julien I. E. Hoffman, Cardiovascular Research Institute, University of California, San Francisco, will present an overview, and scheduled presenters include M. Gimbrone and F. Dewey, N. Staub, S. Factor and R. Chadwick, C. Peskin, S Wickline, R. Ruffolo, and E. Slater.

At the diabetes session, Dr. Jesse Roth, Scientific director, National Institute of Diabetes and digestive and Kidney Diseases, will present an overview, and scheduled presenters include G. Grodsky, O. Rosen, D. Greene, A. Rossini, P. Lacy, R. Bergman, and J. Fain.

A panel of expert scientists chaired by Dr. Gordon H. Sato, Director of the W. Alton Jones Cell Science Center, Lake Placid, New York, will question the presenters and prepare a summary statement of the material presented. The statement will emphasize the panel's answers to the following questions:

- What are the strengths and the limitations of mathematical and physical modeling in solving problems in diabetes and cardiovascular/pulmonary function? What is the general potential of such models in biomedical research.

and can principles be derived for broader applications?

• What are the strengths and the limitations of non-mammalian models in solving problems in diabetes and cardiovascular/pulmonary function? What is the general potential of such models in biomedical research, and are there principles to be derived for broader applications?

• What types of problems in diabetes and cardiovascular/pulmonary function are best studied using mammalian or vertebrate models? What are the strengths and limitations of these models? Are there principles that can be derived for broader applications?

• To solve current and future biomedical problems, are there recommendations that should be made to encourage development and use of particular types of models in the entire spectrum from purely mathematical to human?

On the final day of the meeting, the Conference chairman will read the draft statement to the conference audience and invite comments and questions.

Information on the program may be obtained from: Susan Wallace, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland (301) 468–6555.

Dated: March 20, 1989.

James B. Wyngaarden,

Director, NIH.

[Fr Doc. 89–7212 Filed 3–23–89; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Delegation of Authority; Administrator, Health Resources and Services Administration

Notice is hereby given that in furtherance of the delegation of authority of February 10, 1989, from the Secretary of Health and Human Services to the Acting Assistant Secretary for Health, the Acting Assistant Secretary for Health has delegated the authorities delegated to him under Section 204 of Pub. L. 100–177 entitled, "Special Repayment Provisions" to the Administrator, Health Resources and Services Administration, excluding the authority to issue regulations.

Redelegation

These authorities may be redelegated.

Effective Date

This delegation became effective on March 15, 1989.

Date: March 15, 1989.

Ralph R. Reed,

Acting Assistant Secretary for Health.

[FR Doc. 89–7210 Filed 3–24–89; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–1955]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requested that OMB complete its review within five days.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: March 16, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Processing of Applications for Fiscal Year 1989 Funds for Public Housing Resident Management

Office: Public Housing

Description of the Need for the Information and Its Proposed Use: This new information collection is required in connection with the issuance of a Notice of Fund Availability which announces the availability of $2.5 million for the Public Housing Resident Management Program for Fiscal Year 1989. The Program will provide technical assistance funding to promote "formation and development of resident management entities."

Form Number: None

Respondents: Non-Profit Institutions

Frequency of Submission: One Time Only

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Application Development	150		1		16		2,400

Total Estimated Burden Hours: 2,400

Status: New

Contact: Roger W. Branner, HUD, (202) 755–7970 John Allison, OMB, (202) 395–6880

Date: March 16, 1989.

Supporting Statement for Information Collection

A. Justification

This new information collection is required in connection with the issuance of a HUD Field Notice which announces the availability of $2.5 million for the Public Housing Resident Management Program for Fiscal Year 1989. The Program will provide technical assistance funding to promote "formation and development of resident management entities. The items in the Notice that impose information collection requirements are as follows:

Paragraph 8 (entirety)—Application Development and Submission requires Resident Councils (RCs)/Resident Management Corporations (RMCs) to submit an application if they are interested in being considered for funding opportunities.

Additionally, the RC/RMC must prepare a budget outlining a description of the proposed activities and amount of funds being requested. Form HUD–52825 will be used for this purpose and OMB approval has been obtained; the number is 2577–0044.

2. The information provided by the resident groups (applicants) will be reviewed and evaluated against the selection criteria contained in the Notice for possible funding. The applicants will be notified of their selection/rejection. The information is necessary so that the applicants can apply and compete for funding opportunities.

3. We have not considered the use of improved technology since there is no other way to obtain in the information except directly from the resident groups.

4. There will be no duplication of information.

5. There is no similar information already available which could be used or modified for this purpose.

6. We attempted to minimize the burden on the resident groups by leaving the exact form of the required information requirements up to the respondents.

7. The information will be collected on a one time basis.

8. There are no special circumstances that require the collection to be conducted in a manner which is inconsistent with the guidelines in 5 CFR 1320.5.

9. There has been no outside consultation on this information collection.

10. No assurance of confidentiality is provided.

11. No sensitive questions are asked.

12. We do not estimate that there will be any additional cost to the Federal Government. The applications will be reviewed in accordance with HUD's existing review and monitoring requirements. Annual cost to the respondent is estimated to be minimal since the application submission may be prepared by the resident groups.

13. We estimate that the information requirements of the proposed Notice will have the following reporting burdens:

Reference	Number of respondents	Freq. of response	Estimate Average response time hours	Estimate annual burden hours
Para. 8 (entirely)	150	1	16	2,400
Total reporting burden				2,400

14. The change in burden is totally attributable to the new information collection.

15. The collection of this information will not be published for statistical use.

In the Matter of Public Housing Agencies; Regional Administrators; Directors, Office of Public Housing; Field Office Managers; Housing Mangement Division Directors; Chiefs, Assisted Housing Management Branches.

Processing of Applications for Fiscal Year (FY) 1989 Funds for Public Housing Resident Management

1. *Purpose.* This Notice provides instructions for developing and processing applications for the funding of activities leading to, or in support of, resident management of lower income public housing projects. This Notice invites Resident Councils (RCs)/Resident Management Corporations (RMCs) to submit applications by June 30, 1989.

2. *Background.* Section 122 of the Housing and Community Development Act of 1987 authorizes the Secretary to utilize funds available under Section 14 of the United States Housing Act (Comprehensive Improvement Assistance Program) to encourage increased resident management of public housing projects and a total of $5 million was set aside for this purpose. The Resident Management in Public Housing regulation 24 CFR Part 964 which was published on September 7, 1988, 53 FR 34676 contains policies, procedures and requirements for resident management in public housing. This rule became effective on October 7, 1988, and implements Section 122. The purpose of Section 122 is to encourage increased resident management of public housing projects, as a means of improving existing living conditions in public housing projects, by "providing increased flexibility for public housing projects that are managed by residents by—(1) permitting the retention, and use for certain purposes, of any revenues exceeding operating and project costs, and (2) providing funding, from amounts outherwise available, for technical assistance to promote formation and development of resident management entities." Financial assistance is being made available to Resident Management Corporations (RMCs) or Resident Councils (RCs) that submit applications in response to this Notice that are approved for funding of technical assistance for the development of resident management entities, including the information of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects, and the securing of such support.

Indian Housing is not covered by the provisions of the Notice.

In FY 1988, technical assistance grants totalling $2.5 million were awarded to 27 Public Housing Agencies (PHAs)/RMCs/RCs to fund activities associated with resident management.

For FY 1989, another $2.5 million is available for this purpose with the statutory limitation that not more than $100,000 may be approved with respect to any public housing project. Grant awards will be made via a Technical Assistance Grant (TAG) which will define the legal framework for the relationship between HUD and an RMC/RC for the proposed activities approved for funding. The TAG will contain all applicable requirements which must be complied with in the conduct of activities approved for funding including administrative requirements such as progress reports, a final report and a final audit. All necessary materials regarding the TAG will be furnished at a later date.

3. *Definitions.* Pursuant to Part 964, the following definitions apply:

a. *Project.* Includes any of the following that meet the requirements of Part 964:

(1) One or more contiguous buildings.

(2) An area of contiguous row houses.

(3) Scattered site buildings.

b. *Resident Council (RC).* An incorporated or unincorporated non-profit organization or association that meets each of the following requirements:

(1) It must be representative of the tenants it purports to represent.

(2) It must fairly represent tenants from each project that it represents.

(3) It must adopt written procedures providing for the election of specific officers

on a regular basis (but at least once every three year).

(4) It must have a democratically elected governing board. The voting membership of the board must consist of tenants of the project or projects that the tenant organization or resident council represents.

c. *Resident Management.* The performance of one or more management activities for one or more projects by a resident management corporation under a management contract with the PHA.

d. *Resident Management Corporation (RMC).* The entity that proposes to enter into, or enters into a management contract with a PHA that meets the requirements of Subpart C of Part 964. The corporation must have each of the following characteristics:

(1) It must be a non-profit organization that is incorporated under the laws of the State in which it is located.

(2) If it is established by more than one tenant organization or resident council, each such organization or council must (1) approve the establishment of the corporation and (2) have representation on the Board of Directors of the corporation.

(3) It must have an elected Board of Directors.

(4) Its by-laws must require the Board of Directors to include representatives of each tenant organization or resident council involved in establishing the corporation.

(5) Its voting member must be tenants of the project or projects it manages.

(6) It must be approved by the resident council. If there is no council, a majority of the households of the project must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the project.

The RMC may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of a resident council as defined above.

4. *Eligiblity.* Only organizations that meet the definition of an RC/RMC as outlined in paragraph 3 will be eligible for funding under this Notice as follows:

(a) Any newly formed or existing RC/RMC including any RC formed for the specific purpose of submitting an application for the determination of feasibility of resident management in any project(s) provided such RC remains in existence for at least the term required to make the feasibility determination.

(b) RCs/RMCs selected for funding in FY 1988 who received less than the statutory limitation of $100,000 per project may apply for an additional grant up to the maximum grant amount, and receive consideration for up to a total of $100,000 based on the same evaluation factors as for other applicants. No special considerations will be given. Projects which were awarded the maximum amount of $100,000 in FY 1988 are not eligible to apply.

(c) A resident council which reprsents more one project may apply on behalf of some/all of the projects it represents. In such case, an individual project represented by that council may not apply for technical assistance funding for the same activities that are included in the application submitted by the larger organization.

5. *Eligible Activities.* There are a variety of activities which may be funded and carried out by an eligible RC/RMC. Examples include any combination of, but are not limited to, the following:

a. Determining feasibility of resident management by an RC/RMC of a specific project or projects. Note: By law, an RC *must* hire a qualified public housing management specialist to assist in determining the feasibility of, and to help establish a resident management corporation to perform certain duties in connection with the daily operations of the project.

b. If an RMC is determined to be feasible, funds may be used to assist in the actual creation of the RMC, such as:

(1) Consulting and legal assistance to incorporate the RMC;

(2) Preparing by-laws and drafting corporate charters;

(3) Developing performance standards and assessment procedures to measure the success of the RMC;

(4) Technical assistance in acquiring surety bonding and insurance, but not the cost of the bonding and insurance; and

(5) Assessing potential management functions or tasks that the RMC might undertake.

c. Implementation of activities by an RMC capable of performing management functions associated with the operation and maintenance of the public housing project. Examples of eligible activities in addition to those cited in 5b above, are:

(1) Designing and implementing financial management systems that include provisions for budgeting, accounting, and auditing;

(2) Developing and implementing a long-range planning system;

(3) Assistance in developing and negotiating management contracts and related contract monitoring and management procedures;

(4) Designing and implementing personnel policies, performance standards for measuring staff productivity, policies and procedures covering organizational structure, recordkeeping, maintenance, insurance, management information systems, occupancy, and any other recognized functional responsibility relating to property management in general and public housing management in particular; and

(5) Technical assistance in identifying the social support needs of residents and securing of such support, e.g., health clinics, day care, etc.

d. Technical assistance designed to expand resident management corporations into economic development initiatives to further increase the self-sufficiency of the corporation and residents. Such activities may include:

(1) Preparation of market studies, management plans, and/or plans for a proposed economic development activity.

(2) Legal assistance in establishing a business entity; and

(3) Development of co-op food stores, janitorial and maintenance service firms, etc;

e. Training of residents in duties directly related to the day-to-day management operations of a project(s) and community organization, Board development, and leadership training.

f. Administrative costs necessary for the implementation of activities outlined in subparagraphs 5 a–e above are eligible costs and must clearly support activities related to the goal of resident management. Eligible items/activities include, but are not limited to, the following:

(1) Salaries related to the provision of technical assistance;

(2) Telephone, telegraph, sundry, and nondwelling equipment such as office supplies and furniture; and

(3) Approved travel specifically related to activities for the development and implementation of resident management.

6. *Ineligible Activities.* Ineligible items/activities include, but are not limited to, the following:

(a) Entertainment, including associated costs such as food and beverages;

(b) Purchase of land or buildings or any improvements to land or buildings;

(c) Activities not directly related to resident management, e.g., lead-based paint testing and abatement, operating capital for economic development activities; and

(d) Purchase of any vehicle (car, van, etc.) or any other property having a useful life of more than one year and an acquisition cost of $300 or more per unit unless approved by HUD.

7. *Actions Preceding Application Submission.* Immediately upon receipt of this Notice, the PHA shall notify its existing RC(s) and RMC(s) of this funding opportunity. It is important that residents be advised that, even in the absence of an RC or RMC, the opportunity exists to establish an RC. If no RC or RMC exists for any of the projects, the PHA shall post this Notice in a prominent location within the PHA's main office as well as in each project office.

8. *Application Development and Submission.* The RC/RMC shall prepare and submit the application(s) directly to HUD.

(a.) *Preparation.* All applications *shall* contain the following information in the order listed below:

(1) *Name and address of the RC/RMC.* A copy of the RC's/RMC's organizational documents, e.g. charter, articles of incorporation/by-laws. Name and phone number of contact person in the event further information or clarification is needed during the application review process.

(2) *Name, address* and phone number of the Public Housing Agency responsible for the project(s) to whom inquiries may be addressed concerning this application.

(3) *A narrative statement* of the proposed activities along with an explanation of how the funds will be used, if approved, to determine feasibility of resident management; promote the formation and development and/or implementation and operation of resident management entities; timeframes for proposed goals; and, if applicable, an explanation of how the proposed activities will enhance the management effectiveness or the scope of functions managed by an RMC.

(4) *Amount of funds requested,* the name of the project(s) for which the funds are proposed to be used, number of units, brief description of project occupancy type (family

or elderly), number of buildings, housing type (high-rise, low-rise, walk-up), etc.) and physical condition of project (interior/exterior).

(5) *A budget* with supporting justification and documentation in the form outlined in Appendix A of this Notice. Budget forms HUD–52825 may be obtained from the appropriate PHA or HUD Field or Regional Office. The budget form has OMB approval number 2577–0044.

(6) *The application* must be signed by an individual who is authorized to act for the RC/RMC and must include a resolution from the RC/RMC stating that it agrees to comply with the terms and conditions as established under this program and 24 CFR Part 964.

(7) *The applicant* shall specifically address each of the factors in the order listed in paragraph 9 of this Notice.

In addition to the above information, the RC/RMC may obtain a letter of support from the PHA indicating to what extent it supports the proposed activities. Also, the RC/RMC are encouraged to include an indication of support by project residents (e.g., copy of petition signed by project residents, copies of minutes, letters, etc.), the neighboring community, local public/private groups, including local government in activities relating to resident management and/or economic development initiatives in support of resident management, and evidence of the extent of local public/private sector resources committed to the program. Such resources may include, but are not limited to, financial/technical assistance, community development block grant funds, etc. Letters of support or other evidence of such support should be included with the application. Any indication of such support is not mandatory but will be considered in reviewing applications received for funding.

b. *Submission.* The application(s) including the Budget must be submitted in an original plus one copy on 8½" x 11" paper to HUD Headquarters, Office of Public Housing, Room 4204, 451 7th Street SW., Washington, DC 20410. The deadline for receipt of application(s) is June 30, 1989, 5:15 p.m., Eastern Standard Time, at the above Headquarters address. Additionally, copies of the application must be submitted to the appropriate HUD Regional and Field Offices. For purposes of determining timely receipt of the application, the copies submitted to Headquarters shall govern. Hand delivered application(s) must be in Headquarters by that deadline or will not be considered further. Mailed applications will be accepted if postmarked on or before the deadline *and* mailed by registered, certified or Post Office Express Mail. Private courier services such as Federal Express, DHL, Purolator, etc., are considered hand delivered and must be in the Headquarters Office by the date and time specified above.

9. *Evaluation Factors.* Each of the following rating factors will be considered by HUD in evaluating an application for funding. An applicant can receive up to 100 points.

(a) The probable effectiveness of the proposal in meeting the needs of the RC/RMC and accomplishing their overall objectives. [0–35 Points]

(b) The success of the RC/RMC organization, as evidenced by experiences in promoting tenant participation in meeting the social services and other needs of the project residents. [0–15 Points]

(c) Written evidence of support by a majority of the residents of the project(s) for the activities being proposed. [0–20 Points]

(d) Evidence that the RC/RMC has the support of the PHA and local government officials and other community organizations including private sector groups (indicate the type of support, e.g., financial/technical assistance, etc.) [0–15 Points]

(e) Evidence that the project, based on physical condition, location, future plans for rehabilitation and other factors, is consistent with proposed activities related to resident managment. [0–15 Points].

10. *Selection and Approval Procedures.* The Regional and Field Office shall concurrently review and evaluate the applications in accordance with the evaluation factors contained in paragraph 9 of this Notice. Regional and Field Offices must provide a statement indicating the strength/weaknesses for each evaluation factor. Additionally, the Regional Office must submit to Headquarters recommendations on all of the applications submitted for funding addressing: (1) Level of funding based on the type of activity being proposed by RC/RMCs, (2) a statement on the physical condition of the project(s), (3) other pertinent information on the project(s) where activities are being proposed, and (4) total score.

Regional and Field Offices are to comment on the overall feasibility of the proposed activities and to clarify information as appropriate with the RC/RMC or PHA.

Regional and Field Offices shall transmit their recommendations via the D-base Floppy Disk as well as a hard copy to Headquarters. In the near future, Headquarters will provide instructions as well as Floppy Disks to be used for microcomputer entries for applications recommended for funding in FY 1989.

HUD Headquarters will also review, evaluate and score each application based on the evaluation criteria in paragraph 9 of this Notice. HUD Headquarters will then rank all applications factoring in the rating scores received from the Regional and Field Offices and will fund applications in the order of their ranking until funds are exhausted. HUD will retain applications that are not selected for funding.

11. *Deadline for using funds.* An RC/RMC selected to participate in the program must expend all funds within two years from the time a technical assistance contract is in effect.

12. *Congressional Notification and Transmittal of Approval/Disapproval letters.* HUD Headquarters will be responsible for preparing the Congressional Notifications as well as the RC/RMC approval/disapproval letters.

13. *PHA Notification.* PHA notification will be made by HUD Headquarters of applications received as well as those applications selected for funding.

14. *Implementation.* Additional instructions regarding program implementation will be issued to RCs/RMCs that are selected for funding.

15. *Processing Schedule.*

Steps	Due date
RCs/RMCs submit Applications & Budget.	June 30, 1989.
FO submits recommendations to RO.	July 21, 1989.
RO/FO submits recommendation to Headquarters.	Aug. 11, 1989.
Headquarters makes final selections.	Sept. 1, 1989.
Congressional Notification	Sept. 4, 1989.

For further information contact: Mr. Walter R. Preysnar, Project Management Division, Office of Public Housing Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410 telephone (202) 755–7970 [This is not a toll-free number].

Acting General Deputy Assistant Secretary for Public and Indian Housing

BILLING CODE 4210–01–M

COPY

OMB No. 2577-0044 (Form Approved)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM

COMPREHENSIVE ASSESSMENT/PROGRAM BUDGET

PART I - SUMMARY

PAGE 1 OF 2

NAME OF PHA	LOCALITY (City/County and State)	ACC NUMBER	MODERNIZATION PROJECT NUMBER	FEDERAL FISCAL YEAR	
USA Housing Authority	Anywhere, Virginia	A-1234	VA-30-903	1989	☒ ORIGINAL ☐ REVISION (Give Number)

LINE NO.	SUMMARY BY DEVELOPMENT ACCOUNT	INDIVIDUAL PROJECT NO. VA-30-1	INDIVIDUAL PROJECT NO.	INDIVIDUAL PROJECT NO.	INDIVIDUAL PROJECT NO.	INDIVIDUAL PROJECT NO.	TOTAL FUNDS REQUESTED	HUD-APPROVED FUNDS
1	~~TOTAL OPERATING FUNDS PROVIDED BY PHA~~	$	$	$	$	$		
2	1408 Management Improvements							
3	1410 Administration	59,328						
4	~~1415 Liquidated Damages~~							
5	1430 Fees and Costs	40,000						
6	~~1440 Site Acquisition~~							
7	~~1450 Site Improvement~~							
8	~~1460 Dwelling Structures~~							
9	~~1465.1 Dwelling Equipment—Nonexpendable~~							
10	~~1470 Nondwelling Structures~~							
11	1475 Nondwelling Equipment	672						
12	~~1495.1 Relocation Costs~~							
13	MAXIMUM MODERNIZATION COST *(Sum of Lines 2 through 12)*	$100,000	$	$	$	$	$	$
14	TOTAL MODERNIZATION PROGRAM COST *(Line 1 + Line 13)*	$100,000	$	$	$	$	$	$
15	~~AMOUNT OF LINES 3 AND 5 RELATED TO PLANNING COSTS~~						$	$
16	~~TOTAL PLANNING AND MANAGEMENT IMPROVEMENT COSTS~~ *(Line 15 + Line 2)*							
17	~~AMOUNT OF LINE 13 RELATED TO PHYSICAL IMPROVEMENTS~~ *(Line 13 - Line 16)*						$	$
18	~~LINE 16 ÷ LINE 17 (Not to exceed 10%)~~						%	%
19	~~ANNUAL COST SAVINGS~~							

The PHA will not be allowed to participate in the Comprehensive Improvement Assistance Program unless this form is completed and filed as required by existing regulation.	SIGNATURE OF EXECUTIVE DIRECTOR OR DESIGNEE	DATE	SIGNATURE OF FIELD OFFICE DIRECTOR	DATE

HUD-52825 (6-82)
Part I

NAME OF PHA	COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM COMPREHENSIVE ASSESSMENT/PROGRAM BUDGET PART II - SUPPORTING PAGES					PAGE 2 OF 2
WORK ITEM NUMBER	DEVELOPMENT ACCOUNT NUMBER	ASSESSMENT OF NEED	DESCRIPTION OF PROPOSED/APPROVED ACTION	INDIVIDUAL PROJECT NUMBER	TOTAL FUNDS REQUESTED	HUD-APPROVED FUNDS
(1)	(2)	(3)	(4)	(5)	(6)	(7)
M- 89-1	1410.1	Nontechnical Salaries a. Existing staff is insufficient to determine social services needs. b. Existing staff is insufficient to determine the feasibility of establishing a Resident Management Corporation.	a. Hire a staff person to coordinate the identification of social services needs and to secure supportive services to address those needs. b. Hire a Housing Management Specialist to determine the feasibility of establishing a Resident Management Corporation (RMC).	VA-30-1	51,500 22,500 29,000	
M- 89-2	1410.4	Legal Expense Legal assistance is necessary to incorporate the RMC.	Hire an attorney on an as needed basis to process the incorporation of the RMC. if determined feasible.	VA-30-1	7,000	
M- 89-3	1410.10	Travel Information and training is necessary for the successful implementation of the program.	a. Travel to the State-Wide Conference on Social Services in Virginia 1 person for 3 days @$110 per diem. b. Travel to HUD sponsored training on RMCs 3 persons for 2 days @$83 per diem.	VA-30-1	828 330 498	
M- 89-4	1430.2	Consultant Fees The existing financial management system is inadequate.	Hire a consultant to design and implement a financial management system.	VA-30-1	40,000	
M- 89-5	1475.9	Nondwelling Equipment-Expendable Office furniture needed for new staff.	Purchase two desk and chairs for staff identified in M-89-1.	VA-30-1	672	

HUD-52825 (6-82)
Part II

[FR Doc. 89-7020 Filed 3-23-89; 8:45 am]
BILLING CODE 4210-01-C

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-1917; FR-2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

DATE: March 27, 1989.

ADDRESS: For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans' Administration*, D.C.D.C. No. 88-2503-OG, HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The court order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administration of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The court order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying property determined suitable.

The properties identified in this Notice may ultimately be available for use by public bodies and private nonprofit organizations to assist the homeless. For detailed information on the procedure under section 501(a) that must be followed to apply for use of today's properties, the reader should consult HUD's Notice published February 7, 1988, at 54 FR 6034.

Although not required to do so by either section 501 or the court order, HUD is identifying property, from the information furnished by landholding agencies or GSA, determined unsuitable for use for facilities to assist the homeless, along with the reason for the finding. The court order prohibits the sale, transfer, or other disposition of property found unsuitable for a period of two weeks following the determination.

The contact for GSA properties listed in today's Notice is James Folliard, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405 (202) 535-7067. (These are not toll-free telephone numbers.) Please refer to the GSA identification number of the property.

Dated: March 21, 1989.

James E. Schoenberger,

General Deputy, Assistant Secretary for Housing—Federal Housing Commissioner.

Excess and Surplus Property in GSA Inventory

Suitable Land

U.S. Navy Railroad Property, 8.5 Miles of Spur Track, Santa Rosa County, FL.
Location: Property (4-N-FL-918)
Beginning 15 miles South of the city of Milton, Florida, Santa Rosa County
Comment: Limited access except at RR crossings.

Intl. Flight Service Transmitting Site, Sayville, NY.
Location: Property 2-NY-590
Darringer Ranger District, 1405 Emmons Street, Darringer, WA.
Location: Property 9-A-WA-989
Comment: Designated as suitable for storage only due to possible noise from sawmill.

Unsuitable Land

Submerged Land Oakland Army Terminal, Property 9-D-CA-503-H, Oakland, CA.
Reason: *Floodway;* Submerged under Apro 3 to 9 ft. water in Oakland Bay
Location: Directly South of SF/Oakland Bay Bridge and immediately north of the Oakland outer harbor.

Portion, Tuttle Creek Lake Project, Property 7-D-KS-430-LLL, Marshall County, KS.
Reason: Floodway
Location: Marshall & Pottawatomic Counties
Comment: Acquired for lake project.

Portion, Former Naval Auxiliary Land Field, Property G-R-TI-469-B, Charleston, RI.
Reason: Not accessible by road
Comment: No roadways near or to property.

Marine Corps Development Education Comm., Property 4-GR-VA-493-I, Quantico, VA.
Reason: Not accessible by road
Comment: Completely land locked.

[FR Doc. 89-7184 Filed 3-24-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-09-4111-15; WYW109138]

Proposed Reinstatement of Terminated Oil and Gas Lease

March 15, 1989.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW109138 for lands in Washakie County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW109138 effective June 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 89-7147 Filed 3-24-89; 8:45 am]

BILLING CODE 4310-22-M

[NV-930-09-4212-11; N-19652]

Termination of Recreation and Public Purpose Classification; Nevada

March 16, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Termination of recreation and public purpose classification.

SUMMARY: This action terminates Recreation and Public Purpose (R&PP) Classification N-19652 in its entirety. The land is being transferred to the U.S. Forest Service and since the R&PP Act only applies to public land under the administration of the Bureau of Land Management, the classification is no longer appropriate.

EFFECTIVE DATE: Termination and opening are effective at 12 a.m. on April 26, 1989.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, Bureau of Land Management, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-328-6326.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated April 14, 1987, Recreation and Public Purpose Classification N-19652 is hereby terminated in its entirety:

Mount Diablo Meridian, Nevada

T. 14 N., R. 20 E., sec. 6, NW ¼NW¼SE¼.
The area described contains 10 acres in Douglas County.

The classification made pursuant to the Act of June 14, 1926, as amended, segregated the public land from all other forms of appropriation under the public land laws, including location under the United States mining laws, but not leasing under the mineral leasing laws. The land is being transferred to the U.S. Forest Service effective April 26, 1989. Since the Act only applies to public land, the classification is no longer appropriate.

Accordingly, at 12 a.m. on April 26, 1989, the land described above shall be open to such forms of disposition as may by law be made of national forest land.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-7222 Filed 3-24-89; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Receipt of Application for Permit

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361, *et seq.*, the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Parts 17 and 18).

Applicant

Name: "Marine World" Umino-Nakamichi, PRT-735558, Kaiyo Seitai Kagakukan Co., Ltd., 18-28, Oh-aza, Saitosaki, Higashi-ku, Fukuoka, Fukuoka-Pref., 811-03, Japan.

Type of Permit: Public Display.

Name of Animals: 5 Alaskan sea otter (*Enhydra lutris lutris*).

Summary of Activity to be Authorized: The applicant proposes to Take (capture) these animals and export them to Marine World "Umino-Nakamichi" for public display.

Source of Marine Mammals for Display: State of Alaska, Prince William Sound, Green Island, or as designated by Alaska Department of Fish and Game.

Period of Activity: April 1989 to November 1989.

Concurrent with the publications of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), P.O. Box 27329, Washington, DC 20038-7329, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) at 1375 K Street, NW., Room 400, Washington, DC.

Dated: March 22, 1989.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89-7233 Filed 3-24-89; 8:45 am]

BILLING CODE 4310-AN-M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 73]

Ohio Motor Freight Tariff Committee, Inc.; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: Ohio Motor Freight Tariff Committee, Inc. (OMFTC), has filed, under section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Since modifications are required before the agreement can receive final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions. Copies of OMFTC's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, 12th St. and Constitution Ave., NW., Washington, DC, 20423, and from OMFTC's representative: Thomas M. Auchincloss, Jr., Rea, Cross, and Auchincloss, 918 - 16th Street, NW., Washington, DC 20006.

DATES: Comments from interested persons are due by April 28, 1989. Replies are due 15 days thereafter.

ADDRESS: An original and 10 copies, if possible, of comments referring to section 5a Application No. 73 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard Hartley, (202) 275-7786, or Richard Felder, (202) 275-7691.

[TDD-for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: We have provisionally approved OMFTC's agreement as consistent with 49 U.S.C. 10706(b) and *Motor Carrier Rate Bureaus—Imp. P.L. 96-296*, 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981) (*Rate Bureau*), subject to certain modifications including the following subject areas: identification and description of member carriers; right of independent action; rate bureau protests; employee docketing; open meetings; quorum standards; final disposition of cases; general standards for member voting and discussion of collectively established rates; single-line rates;

general increases and decreases; zone of vote freedom and released rates. We have also offered comments and imposed requirements concerning the agreement generally. OMFTC has been directed to file a revised agreement conforming to the imposed conditions within 120 days of service of the decision provisionally approving the agreement.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MCA and *Rate Bureau*, we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria generally, and their application to OMFTC's agreement.

A copy of any comments filed with the Commission must also be served on OMFTC, which will have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that OMFTC must submit to the Commission as a condition precedent to final approval of its agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275–7428. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: March 20, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–7198 Filed 3–24–89; 8:45 am]

BILLING CODE 7035–01–M

[Section 5b Application No. 4 [1]]

Southern Ports Foreign Freight Committee; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Order to show cause.

SUMMARY: The Commission is directing the Southern Ports Foreign Freight Committee (SPFFC) to explain why its antitrust immunity should not be revoked.

DATES: SPFFC is required to show cause by May 23, 1989, why its antitrust immunity should not be revoked. Other parties must respond by June 22, 1989, and SPFFC's reply must be filed by July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

[TDD for hearing impaired: (202) 275–1721].

ADDRESSES: Send an original and 10 copies of pleadings referring to section 5b Application No. 4 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

In addition, a copy of all submissions must be sent to SPFFC's representative: J.J. Dolan, 222 South Riverside Plaza, Chicago, IL 60606.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 275–7428.

[Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: March 20, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–7199 Filed 3–24–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31402]

The Great Walton Railroad Co., Inc., Lease Exemption; Central of Georgia Railroad Company's Line Between Machen and Covington, GA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts The Great Walton Railroad Company (Great Walton) and Central of Georgia Railroad Company (Central) from the prior approval requirements of 49 U.S.C. 11343–11345 to allow Great Walton's lease and operation of 27.6 miles of rail and rail-related property, now owned and operated by Central, between Machen, GA and Covington, GA.

DATES: The exemption will be effective on March 30, 1989. Petitions for reconsideration must be filed by April 17, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31402 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representatives:

For The Great Walton Railroad Company:

John R. Molm, Suite 1400, Candler Building, 127 Peachtree Street, NE., Atlanta, GA 30043–7101.

For The Central of Georgia Railroad:

Robert J. Cooney, Senior General Attorney, Central of Georgia Railroad Company, Three Commercial Place, Norfolk, Virginia 23510–2191.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

[TDD for hearing impaired (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359.

[Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: March 17, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–7200 Filed 3–24–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Federal Water Pollution Control Act; City of LaPorte and State of Indiana

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 13, 1989 a proposed Consent Decree in *United States* v. *City of LaPorte and State of Indiana*, Civil Action No. S 87–00067, was lodged with the United States District Court for the Northern District of Indiana (South Bend Division). The proposed Consent Decree concerns discharge of pollutants from the City of LaPorte's wastewater

[1] Embraces 5b Application No. 4 (Sub-No. 1).

treatment works to Travis Ditch. The proposed Consent Decree requires that City conclude an extensive construction upgrade at the treatment works, which will allow that facility to meet the final water quality limits contained in the City's National Pollution Discharge Elimination System ("NPDES") Permit. The proposed Decree also obligates the City to carry out a pollutant loading study with respect to copper. The City also must pay a $25,000 civil penalty under the terms of the proposed Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assisant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of LaPorte and State of Indiana*, D.J. Ref. 90-5-1-1-2781.

The proposed Consent Decree may be examined at the Offices of the United States Attorney, Federal Building (fourth floor), 507 State Street, Hammond, Indiana 46302-1577; at the Region V Office of the United States Environmental Protection Agency, 111 West Jackson Street, 3rd Floor, Chicago, Illinois 60604; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-7136 Filed 3-24-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Virginia Electric and Power Co.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on March 10, 1989 a proposed consent decree was lodged with the United States District Court for the Eastern District of Virginia in *United States* v. *Virginia Electric and Power Company*, Civil Action No. 89-19-NN. The proposed consent decree addresses existing surface water contamination at and in the vicinity of several fly ash disposal pits located in York County, Virginia (the "Site"). The decree requries defendant Virginia Electric and Power Company ("Virginia Power") to take steps to remedy existing surface water contamination and to monitor the quality of surface waters and ground waters at and in the vicinity of the Site. The decree also requires Virginia Power to reimburse the United States for response costs incurred in connection with the Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Virginia Electric and Power Company*, DJ Ref. 90-11-2-239.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of Virginia, Room 409, United States Post Office & Courthouse, Granby Street, Norfolk, Virginia, and at the Region III office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania. Copies of the consent decree may be examined at the offices of the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of $5.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-7137 Filed 3-24-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement. The OMB and Agency identification numbers, if applicable. How often the recording/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics

1989 SAFETY AND HEALTH RESEARCH STUDY.

Form #	Affected public	Respondents	Frequency	Average time per response
OHSA 200	Selected private employers	840	Annual	3 minutes.
OHSA 101	Selected private employers	375	Annual	35 minutes.

262 total hours.

This study will obtain and evaluate the operational, quality, and cost characteristics of a method for reporting and coding occupational injury and illness individual case information.

REVISION

Bureau of Labor Statistics

PILOT SURVEY OF OCCUPATIONAL EMPLOYMENT AND WAGES

[BLS-2877]

Form #'s	Affected Public	Respondents	Frequency	Average Time Per Response
934-0	Businesses or other for-profit; Small businesses or organizations.	66	single-time	1 hour 32 minutes
934-1a	Businesses or other for-profit; Small businesses or organizations.	272	single-time	54 minutes
934-1b	Businesses or other for-profit; Small businesses or organizations.	272	single-time	18 minutes
935-0	Businesses or other for-profit; Small businesses or organizations.	120	single-time	1 hour 32 minutes
935-1a	Businesses or other for-profit; Small businesses or organizations.	210	single-time	54 minutes
935-1b	Businesses or other for-profit; Small businesses or organizations.	210	single-time	18 minutes

863 total hours

The current OES survey is a Federal/State sample survey of employment by occupation in non-farm establishments. The proposed OES pilot survey will produce data on current occupational wages in addition to employment. This pilot survey is designed to test collection procedures and feasibility and to measure data quality.

Reinstatement/Revision

Occupational Safety and Health Administration

Electrical Standards for Construction, 1218-0062, Recordkeeping, Businesses or other for-profit; Small businesses or organizations.

75,247 respondents; 75,247 responses; 3.38 hours average per response; 253,816 total hours; no forms.

Requirement	Respondents	Average Frequency	Average Time Per Response	Total Hours
Marking of disconnecting means	75,247	37.3	5 min.	234,000 hrs.
Written description of grounding program	75,247	0.014	45 min.	813 hrs.
Marking of motor controllers	75,247	0.006	1 min.	7 hrs.
Marking of transformer voltage	75,247	0.251	1 hr.	18,900 hrs.
Marking of procedures for series capacitors	75,247	0.001	1 hr.	94 hrs.
Equipment marking provisions	0		0 hr.	0 hrs.

These collection of information requirements require construction employers to identify disconnecting means for certain electrical circuits, to keep a written description of a grounding program, to post signs giving the voltage of transformer installations, and to post switching procedures for certain capacitor installations. These requirements help protect employees from electrical hazards.

Signed at Washington, DC this 14th day of March, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-7154 Filed 3-24-89; 8:45 am]

BILLING CODE 4510-00-M

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment and Training Administration

Targeted Jobs Tax Credit (TJTC) Program Report Forms; 1205-0058; ETA 8471, 8472, 8473, 8588; Quarterly, State of local governments; businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small.

Form No.	Affected public	Respondents	Frequency	Average time per response
ETA 8471	State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.	52	Quarterly	8 hrs.
ETA 8472	do	52	Quarterly	8 hrs.
ETA 8473	do	52	Quarterly	7 hrs.
ETA 8588	do	52	Quarterly	6 hrs.
Recordkeeping	do	52	Annually	997 hrs.

Data provided by the State on these forms are used for program planning and evaluation and for oversight or verification activities as mandated by the Tax Equity & Fiscal Responsibility Act of 1982, the Deficit Reduction Act of 1984, the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988.

Procedures for Classifying Labor Surplus Areas 1205-0207; On occasion; State or local governments, 52 respondents; 208 total hours; 1 hr. per response; no forms DOL issues an annual list of labor surplus areas (LSAs) so that Federal agencies can direct procurement contracts to employers in high unemployment areas. The annual LSA list is updated during the year based upon petitions submitted to DOL by State employment security agencies requesting additional areas for LSA classification.

Occupational Safety and Health Administration

Powered Platforms; 1218-0121; Recordkeeping; Businesses or other for-profits; 19,500 respondents; 243,750 total burden hours; 1.104166 average number hours per response; Inspections; 19,500 respondents; 243,750 hours.

OSHA is requiring this information to be collected by employers for determining the cumulative maintenance status of a powered platform and for taking the necessary preventive action to assure employee safety.

Employment Standards Administration

Accident Data on School Bus Drivers Annual Report; 1215-0045; WH-374; Annually; State or local governments; 1 respondent; 2 total hours; 2 hours per response; 1 form § 570.52 declares the occupation of motor vehicle driver to be hazardous for 16 and 17 year olds. Upon application by a State, an exemption may be granted to permit such minors to drive school buses. The data provided annually on form WH-374 is used to evaluate whether an exemption is warranted.

Signed at Washington, DC this 21st day of March, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-7155 Filed 3-24-89; 8:45 am]

BILLING CODE 4510-00-M

Employment and Training Administration

[TA-W-18,678]

Bass Enterprises Production Co., Fort Worth, TX; Revised Determination on Remand

Pursuant to a U.S. Court of International Trade remand in *Former Employees of Bass Enterprises Production Company* v. *U.S. Department of Labor* (USCIT 87-04-00548) the Department is issuing a revised determination.

The administrative record shows that the major share of Bass' 1985 sales decline was accounted for by decreased gas sales. In the previous remand investigation the Department conducted a survey of Bass' gas customers and concluded that there was no basis for certification.

In this reconsideration, the Department's survey obtained additional and corrected information from a major gas customer which accounted for a major share of Bass' sales decline of gas in 1985 compared to 1984. The corrected information showed

that customers accounting for a major share of Bass' 1985 sales decline of gas had increased import purchases of gas in 1985 compared to 1984.

Worker separation began in 1985. Production worker employment decreased in 1986 compared to 1985. Company sales and production of gas decreased in quantity and value in 1985 and in 1986.

The Department's certification is based on its standard policy of looking at quantity especially in regards to the decreased sales or production and increased import crtieria of the Group Eligibility Requirements of the Trade Act. The Department's investigation evaluated natural gas production, sales and import data in quantity.

An inquiry was made into the allegations of bias and none was found; although some inadvertent miscommunication and misunderstanding between the petitioner and staff may have occurred.

Conclusion

After careful review of the additional facts obtained on remand, it is concluded that increased imports of gas like or directly competitive with the gas produced at Fort Worth, Texas contributed importantly to worker separations and to decline in production and employment at Bass Enterprises Production Company, Fort Worth, Texas. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Bass Enterprises Production Company, Fort Worth, Texas who were separated from employment on or after August 16, 1985 and before January 1, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this March 14, 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[Fr Doc. 89-7169 Filed 3-24-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,391]

A.K. Guthrie Drilling, Big Spring, TX; Negative Determination of Reconsideration

On February 3, 1989, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers at A.K. Guthrie Drilling, Big Spring, Texas. The affirmed notice regarding application for reconsideration will soon be published in the **Federal Register.**

The petitioners claimed, among other things, that they should be covered under the provisions of the 1988 amendments to the Trade Act since they were employed by an independent firm providing services to firms in the oil and gas industry.

On reconsideration, the Department found that the drilling workers were employed by Mr. A.K. Guthrie, individual. The workers drilled exclusively for the A.K. Guthrie Operating Company which produces the crude oil. Mr. A.K. Guthrie controls the A.K. Guthrie Operating Company. The drilling workers, therefore, were not employed by an independent firm providing services to unaffiliated firms in the oil and gas industry.

Other findings on reconsideration show that the A.K. Guthrie Operating Company sold all its crude oil to independent refineries who do not import crude oil.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who were engaged in the production of crude oil if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to former workers of A.K. Guthrie Drilling, Big Spring, Texas.

Signed at Washington, DC, this 6th day of March 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89-7170 Filed 3-24-89; 8:45 am

BILLING CODE 4510-30-M

Cabot Transmission et al; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of December 1988 and January 1989.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-21,806; Cabot Transmission, Amarillo, TX.

TA-W-21,665; Simonds Industries, Inc., Portland, OR.

TA-W-21,898; The Marietta Royalty Co., Marietta, OH.

TA-W-21,932; Quaker State Corp., Titusville Production Dept, Titusville, PA. A Quaker State Oil Refining Corp, Titusville, PA.

TA-W-21,904; Moore & Munger Energy, Inc., Smackover, AR.

TA-W-21,876; Intercontinental Energy Corp., Three Rivers, TX.

TA-W-22,006; Yates Petroleum Corp., Artesia, NM.

TA-W-22,065; Shape Optimedia, Sanford, ME.

TA-W-22,013; Beu-Tex Corp, Morgantown, NC.

TA-W-21,619; Eastern Lithograph Label, Englewood, NJ.

TA-W-22,148; Hamilton Brothers Oil Co., Denver, CO.

TA-W-22,083; Triangle Industries, Inc., American National Can Co., Milwaukee, WI.

TA-W-22,083A; Triangle Industries, Inc., American National Can Co., Oak Creek, WI.

TA-W-22,202; Vega Oil and Gas Co., El Dorado, AR.

TA-W-22,073; Straus Knitting Mills, Inc., St. Paul, MN.

TA-W-22,316; Eagleline Corp., Pleasantville, PA.

TA-W-22,332; Standard Putnam, Inc., Tilton, NH.

TA-W-21,945; Retamco Operating, Inc., San Antonio, TX.

TA-W-21,773; Adobe Resources Corp., Pittsburgh, PA.

TA-W-21,920; Olympic/Shea Ventures, Succeeded by Olympic Exploration & Production Co., Denver, CO.

TA-W-21,817; Cone Mills Corp., Edna Plant, Reidsville, NC.

TA-W-22,277; Cone Mills Corp., Minneola Plant, Gibsonville, NC.
TA-W-22,269; Ames Co., Plant #2, Parkersburg, WV.

In the following cases, the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-21,146; The Estate of William G. Helis, A Partnership, Denver, CO. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,075; Cooper's Testing Service, Lafayette, LA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-TA-W-21,167; Chevron USA, Inc., Supply & Distribution, Eastern Region, Houston, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,125; Offshore Navigation, Inc., Harahan, LA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,125A; Offshore Navigation, Inc., Houston, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,245; United Technologies, Automotive, Inc., Dearborn, MI. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,155; Adorence Co., Inc., Secaucus, NJ. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,073; Cooper Industries, Flow Control Div., Shreveport, LA. U.S. imports of oilfield machinery are negligible.

TA-W-21,212; Oxford Drapery Co., South Boston, MA. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,069; Chiles-Alexander Offshore, Inc., Lafayette, LA. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-21,104; Great Western Energy, Inc., Littleton, CO. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-21,086; Forest Oil Corp., Corporate Headquarters, Denver, CO. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-21,104A; Forest Oil Corp., Rocky Mountain Div., Denver, CO. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-21,052; Amtel Consulting Co., Houston, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,230; Helvetia Coal Co., Indiana, PA. U.S. imports of coal re negligible.

TA-W-22,201; Unisys Corp., Plymouth Plant, Plymouth, MI. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,923; Perry Gas Processors, Inc., Odessa, TX. U.S. imports of oilfield machinery are negligible.

TA-W-22,286; Intec Medical, Blue Springs, MO. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,809; Capitan Enterprises, Inc., Odessa, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,171; Peterson Management Co., Midland, TX. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-21,991; Valdez Surveying, Inc., Valdez, AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,185; Storage Technology Corp., Louisville, CO. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-21,941; Range Drilling Co., Inc., Wichita, KS. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,976; Superior Plumbing & Heating, Anchorage AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,170; Control & Valve Equipment Co., Tulsa, OK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,213; Peerless Footwear, Inc., New York, NY. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,218, TA-W-21,219, TA-W-21,220; Reed Transporation, Casper, WY, Evanston, WY and Gillette, WY. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,260; Texaco, Inc., Central Exploration Div., Denver, CO. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,267; Adkins Supply, Inc., Hobbs, NM. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,053; Parsons Contractor, Inc., Pasadena, CA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,790; Baker Hughes, CAC Div., Oklahoma City, OK. U.S. imports of oilfield pumps are negligible.

TA-W-21,731; Leshners Corp., Cincinnati, OH. Increase imports did not contribute importantly to workers separations at the firm.

TA-W-21,840; Fiberflex Products, Limited, Big Spring, TX. Increase imports did not contribute importantly to workers separations at the firm.

TA-W-21,742; Norcon, Inc., Anchorage, AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,565; Gas Equipment Co., Inc., Houston, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,203; The Wiser Oil Co., Corbin, KY. The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA-W-21,798; Borden Energy Resources, Inc., Geismar, LA. The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA-W-22,025; Davis Frac Tanks and Supply co., Wooster, OH. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,267; Adkins Supply, Inc., Hobbs, NM. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,330; Burton/Hawks, Inc., Casper, WY. The investigation revealed that criterion (LO has not been met. Employment did not decline during the relevant period as required for certification.

TA-W-21,536; Standard Oil Production Co., Exploration Business Development Unit, Houston, TX. The Workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,372; New-Mex Construction Co., Inc., Hobbs, NM. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,532; Samson Ocean Systems, Shirely, MA. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,367; Star Sportswear Manufacturing Co., Locust Street, Lynn, MA. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,538; Teinert Pools, Inc., Midland, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,400; Browder Electric Service Co., Big Lake, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,472; Premium Casing and Tubing Inspection Co., Midland, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,979; Terra Resources, Inc., Gillette, WY. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,236; Keystone Fireworks Manufacturing Co., Inc., Dunbar, PA. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,284; Heritage Cable TV, Branford, CT. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,655; Oklahoma Petroleum Management Corp., Okemah, OK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,655A; Oklahoma Petroleum Management Corp., Tulsa, OK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,234; Independent Contractors, Denham Springs, LA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,197; Terra Resources, Inc., Denver, CO. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-22,290; Johnson Controls, Inc., Automotive Seat Group, Vincennes, IN. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,268; Allied Products Co., Midfield, AL. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,305; Sohmer & Co., Inc., Ivoryton, CT. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,275; Coca Cola, Inc., Clarksdale, MS. U.S. imports of soft drinks were negligible.

TA-W-22,108; ATSF Railroad, Amarillo, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,108A; B N Railroad, Amarillo, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,045; Personal Products Div., Johnson & Johnson, Skillman, NJ. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,852; Grand Teton Contracting Co., Inc., Beattyville, KY. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,830; El Paso Natural Gas Co., Afton Turbine Station, LaMesa, NM. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,985; Torch Operating Co., Oklahoma City, OK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,281; General Motors Corp., CPC Bay City, Bay City, MI. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-21,895; Mammoth of Alaska, Anchorage, AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,905; Morrison Knudsen Co., Inc., Fairbanks, AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,906; Morrison Knudsen Co., Inc., Anchorage, AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,004; World Producers, Inc., Dallas, TX. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-21,892; Lynden Transport, Inc., Seattle, WA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,909; Natkin/Ahtna, Anchorage, AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,907; Mukluk Freight Lines, Inc., Seattle, WA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,010; Atlas Energy Group, Inc., Coraopolis, PA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,810; Capitol Trencher Corp., Odessa, TX. U.S. imports of oilfield machinery are negligible.

TA-W-21,982; Texas Oil and Gas Corp., Denver, CO. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,963; Southwest Energy Corp., Tulsa, OK. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,298; PBCP Services, Inc., Midland, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,262; U Save Auto Rental, Meridian, MS. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,801; Britt Construction Co., Lamesa, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,102; Anidarkco Co., Houston, TX. The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

A-W-21,784; Arapaho Oil and Gas, Inc., Carlsbad, NM. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,961; Sohio Construction Co., Anchorage, AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,960; Slana Surveys, Inc., Anchorage, AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,956; Shaughessy & Co., Seattle, WA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,494; Vetco Gray, Inc., Ventura, CA. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,307; Republic Supply Co., Tioga, ND. U.S. imports of oilfield machinery are negligible.

TA-W-21,258; Bell Hilicopter Textron, Inc., Amarillo, TX. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,239; TXO Production, Corp., Beaumont, TX. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,386; TXO Production Corp., Midland, TX. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,261; Donald C. Slawson Oil Producer, Amarillo, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,261A; Donald C. Slawson Oil Producer, Ness City, KS. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,311; Slawson Drilling Co., Wichita KS. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,309; Seibel & Sons, Inc., Ross, ND. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,284; Hawthorne Oil and Gas Corp., Lafayetta, LA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,178; Dynamic Exploration, Inc., Lafayette, LA. The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA-W-21,342 and TA-W-21,343; General Motors Corp., BOC Lansing, Lansing, MI. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,255; Atlas Processing Co., Shreveport, LA. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,214; Pennzoil Exploration and Production Co., Gulf Coast Div., Corpus Christi, TX. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,291; Midwest Equipment Co., Odessa, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,507; Bethlehem Steel Corp., Printery, Bethlehem, PA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,371; National Supply Co., Gainesville, TX. U.S. imports of oilfield machinery and pumps for oilfield drililng are negligible.

TA-W-21,223; Roughrider Drilling Fluids, Inc., Denver, CO. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,383; Southwest Gas System, Inc., Houston, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,482; Terra Resources, Inc., Casper, WY. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-21,598; Bethlehem Supply Corp., Tulsa, OK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,561; Dover Resources, Inc., Norris Sucker Rod Div., Tulsa OK. The investigation revealed that criterion (2) has not been met. Sales or production did not did not decline during the relevant period as required for certification.

TA-W-21,299; Pine Valley Resources, Inc., North East, PA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,266; Electronic Data Systems, Fairfield, NJ. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,325; B & W Surveying and Mapping, Inc., Midland, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,416; Endevco, Inc., Dallas, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,298; Petroleum Information, San Antonio, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,244; Mobil Exploration & Producing Services, Dallas, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,962; Sourdough Freight Lines, Fairbanks, AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,969; Standard Alaska Production Co., Anchorage, AK. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-22,119; Consolidated Energy Corp, Seneca, PA. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,076; Taylor Drilling Co., Chehalis, WA. The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA-W-21,134; Evers, Electric Co., El Dorado, AR. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,980; Texas Eastern Corp., Houston, TX. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,219 Endevco Producing Co., Jackson, MS. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,221; Endevco, Inc., Fandango Plant, Zapata, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22, O.H. and F, Inc., Grayville, IL. The workers' firm does not

produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–22,258; Spooner Petroleum Co., Jackson, MS. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–22,265; Willbros Energy Service, Tulsa, OK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–22,118; Commonwealth Savings Association, Commonwealth Mortgage of America L.P., Houston, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–22,617; Dresser-Rand Co., Worthington Div., Buffalo, NY. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–22,212; Carhartt, Inc., Irvine, KY. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–22,930; Producers Oil Co., Tulsa, OK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–22,117; Cofsco, Inc., Wooster, OH. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–22,014; Bragg Crane and Rigging Co., Long Beach, CA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,703; Charles Thomas Distributing Co., Houston, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,390; Veritas Technical Service, Inc., Houston, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,929; Pride and Suther, Seattle, WA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–22,089; Victory Energy Development Co., Indiana, PA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–22,012; Bechtel Construction, Inc., San Francisco, CA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,911; Niel F. Lampson, Inc., Kennewick, WA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,916; Northland Maintenance, Anchorage, AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,958 and TA–W–21,959; Silverridge Corp., Van Buren, AR and Oklahoma City, OK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,996; Weiser-Brown Oil Co., Magnolia, AR. The investigations revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–21,439; Jack/Wade Drilling, Inc., Lafayette, LA. The investigations revealed that criterion (1) and (2) has not been met. Employment did not decline the relevant period as required for certification. Sales or production did not declined during the relevant period as required for certification.

TA–W–21,650; Mundy Maintenance Circles, Inc., Corpus Christi, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,968; Stanco Insulation Services, Roosevelt, UT. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,861; Haskell Corp., Bellingham, WA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,661; Rawling Sporting Goods, Licking, MO. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–21,844; Fullman Co., Portland, OR. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,745; Oilfield Safety, Inc., Williston, ND. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,922; Helham Marine, Inc., Houma, LA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,883; W.P. Johnson Oil Co., El Dorado, AR. The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA–W–21,741; New ERA Petroleum Consultants, Englewood, CO. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,688; America Bank In Louisiana, Morgan City, LA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,590; Unit Flow Thru Terminal, Flint, MI. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,651; Newman Oil Co., Bradford, PA. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–21,652; Newman Drilling Co., Bradford, PA. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–21,653; Newman AMD UHL Oil Co., Bradford, PA. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–21,595; American Penn Energy, Inc., Denver, CO. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–21,714; Don Lankford Drilling Co., McLeansboro, IL. The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA–W–21,788; Arkansas Oil & Gas Commission, El Dorado, AR. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,704; Church-Ritcher Energy Co., Denver, CO. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,777; Algoma Tube Corp., Houston, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,208; Bob Head Excavation, Indiana, PA. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–21,504; Zwicker International Mills, Waupaca, WI. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–21,503; Zwicker Knitting Mills, Appleton, WI. The investigation

revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA-W-22,111; Baker Industries, A Division of Sonaco Products Co., Pine River, MN. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,854; The Gruy Companies, Inc., Irving, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,146; H.J. Gruy & Associates, Inc., Irving, TX. The workers' firm does not contribute importantly to workers separations at the firm.

TA-W-21,147; Gruy Petroleum Management Co., Irving, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,411; Drilex Systems, Inc., Casper, WY. The workers' firm does not contribute importantly to workers separations at the firm.

TA-W-21,546; Accurate Parts Co., Kokomo, IN. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,255; Southern Automation, Inc., Gautier, MS. The workers' firm does not contribute importantly to workers separations at the firm.

TA-W-22,245; Mobil Oil Exploration & Production Services, Inc., Onshore Production Operation, Lafayette, LA. The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA-W-21,998; Western Kansas Drilling, Hays, KS. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-21,931; Prudential Oil and Gas Co., Houston, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,811; Cavenham Energy Resources, Winnfield, LA. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,910; Ned R. Price Oil Co., Smackover, AR. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-22,152; Hydril Co., Houston, TX. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-22,018; Clarostat-Gorham, Inc., Gorham, ME. Increased imports did not contribute importantly to workers separation at the firm.

TA-W-21,908; Murphy Oil USA, Inc., El Dorado, AR. The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA-W-21,701; Central Oil Field Supply Co. of Logan, Logan, OH. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,775; Alaska International Construction, Inc., Anchorage, AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,903; Missouri Typewriter Exchange, Inc., Westzville, MO. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,856; H.C. Price Construction Co., Anchorage, AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,785; Artic Slope, Seattle, WA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,841; Fleetwood Petroleum, Ltd, Bellevue, WA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,046; Kaw Pipe Line Co., Russell, KS. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,973; Stream Energy, Inc., Oklahoma City, OK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,120; Council of Energy Resources, Denver, CO. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,583; Pittsburgh & Lake Erie Railroad Co., Pittsburgh, PA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,481; TRW, Inc., Seat Belt Division, McAllen, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,587; TK Valve & Manufacturing, Inc., Hammond, LA. U.S. imports of ball valves declined absolutely in 1987 compared to 1986.

TA-W-21,459; The Moran Corp., Houston, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,478; The Southland Corp., Great Meadows, NJ. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,424; G & E Siemens, El Paso, TX. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,523; Leppaluto Offshore Marine Inc., Vancouver, WA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,463; Otis Engineering Corp., Carrollton, TX. U.S. imports of oilfield machinery are negligible.

I hereby certify that the aforementioned determinations were issued during the months of December 1988 and January 1989. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 13, 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-7168 Filed 3-24-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,698 and TA-W-21,311]

C.E. Natco and Slawson Drilling Co.

Dismissal of Applicants for Reconsideration Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of trade Adjustment Assistance for workers at the C.E. Natco, Williston, North Dakota and Slawson Drilling Company, Wichita, Kansas. The reviews indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissal of the applications were issued.

TA-W-21,698; C.E. Natco, Williston North Dakota (March 8, 1989)

TA-W-21,311; Slawson Drilling Company, Wichita, Kansas (March 6, 1989)

Signed at Washington, DC this 14th day of March 1989

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-7158 Filed 3-24-89; 8: 45 am]

BILLING CODE 4510-30-M

[TA-W-21,713 and TA-W-21,713A]

Dixilyn-Field Drilling Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 9, 1989 applicable to all workers of Dixilyn-Field Drilling Company, Houston, Texas.

Based on new information from the company, additional workers were separated from Dixilyn-Field Drilling Company, Lafayette, Louisiana during the period applicable to the petition. The notice, therefore is amended by including the Lafayette, Louisiana location.

The amended notice applicable to TA-W-21,713 is hereby issued as follows:

All workers of Dixilyn-Field Drilling Company, Houston, Texas and Lafayette, Louisiana who became totally or partially separated from employment on or after October 1, 1985 and before August 30, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th Day of March 1989.

Robert O. Deslongchamps.

Director, Office of Legislation and Actuarial Service;

[FR Doc. 89-7164 Filed 3-24-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,720 and TA-W-21,720A]

Forwest Inc.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Tarde Act of 1974 (19 U.S.C. 2237) and the retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 13, 1989, applicable to all workers of Forwest Inc., Grassy Butte, North Dakota.

Based on new information from the company, additional workers were separated and operations terminated at all locations of Forwest Inc., in Montana in 1986. The notice, therefore, is amended by including all locations of Forwest Inc., in Montana.

The amended notice applicable to TA-W-21,720 is hereby issued as follows:

All workers of Forwest Incorporated, Grassy Butte, North Dakota and all workers at all locations in Montana of Forwest Incorporated who were separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of March 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-7165 Filed 3-24-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,097]

Grant-Norpac, Inc.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of Grant-Norpac, Inc., Headquartered in Houston, Texas and Operating Through the Following Locations:

TA-W-21,098 Traverse City, Michigan
TA-W-21,099 New Iberia, Louisiana
TA-W-21,100 Bakersfield, California
TA-W-21,101 Denver, Colorado
TA-W-21,102 Midland, Texas
TA-W-21,102A Englewood, Colorado
TA-W-21,102B All Locations in Wyoming
TA-W-21,102C All Location in Oklahoma

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) and the retroactive provisions of section 1421 (a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 22, 1988 applicable to all workers of Grant-Norpac, Inc., Houston, Texas; Traverse City, Michigan; New Iberia, Louisiana; Bakersfield, California; Denver, Colorado; Midland, Texas and Englewood, Colorado.

Based on new information from the company, additional workers were separated and operations terminated in 1986 at all locations of Grant-Norpac, Inc., in Wyoming and Oklahoma. The notice, therefore, is amended by including all locations of Grant-Norpac, Inc. in Wyoming and Oklahoma.

The amended notice applicable to TA-W-21,097, 21,098, 21,099, 21,100, 21,101, 21,102, 21,102A is hereby amended:

All workers of Grant-Norpac, Incorporated, headquartered in Houston, Texas and operating in the locations listed below who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-21,098 Traverse City, Michigan
TA-W-21,099 New Iberia, Louisiana
TA-W-21,100 Bakersfield, California
TA-W-21,101 Denver, Colorado
TA-W-21,102 Midland, Texas
TA-W-21,102A Englewood, Colorado
TA-W-21,102B All Locations in Wyoming
TA-W-21,102C All Location in Oklahoma

Signed at Washington, DC, this 7th day of March 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-7166 Filed 3-24-89; 8:45 am]

BILLING CODE 4510-30-M

Great Northern Oil Corp., et al.; Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period January 1989 and February 1989.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles, like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

In the following cases, the investigation revealed that criterion (3' has not been met for the reasons specified.

TA-W-21,428; Great North Oil Corp., San Antonio, TX. The workers' firm

does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-21,430; Gulf & Western Oil Corp., San Antonio, TX. The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-21,890; Loco Hills Pump Services & Supply, Inc., Artesia, NM. The workers' firm does not produce an article as required for certification.

TA-W-21,541; Transworld Oil U.S.A., Inc., Houston, TX. The workers' firm does not produce an article as required for certification.

TA-W-21,588; Texas Primate Center, Davison Hazleton Research Products, Alice, TX. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,577; Manville Forest Products, Huttiq, AR. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,995; Webb Brothers Well Service, Inc., El Dorado, AR. The workers' firm does not produce an article as required for certification.

TA-W-21,887; Kuster Co., Broussard, LA. The workers' firm does not produce an article as required for certification.

TA-W-21,879; J.O.B. Operating Co., Shreveport, LA. The workers' firm does not produce an article as required for certification.

TA-W-22,249; Pennzoil Exploration & Production Co., U.S. Offshore Div. Office, Houston, TX. The workers' firm does not produce an article as required for certification.

TA-W-21,174; Ryan Service, Inc., El Campo, TX. The workers' firm does not produce on article as required for certification.

TA-W-22,174; Phellips Production Co., Butler, PA. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,891; Lowery Oil Co., E. Dorado, AR. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,084; Trico Industries, Inc., Huntington Park, CA. U.S. imports of oilfield machinery are negligible.

TA-W-21,674; Utility Trailer Co., El Paso, TX. U.S. imports of van type trailers are negligible.

TA-W-21,405; Consolidation Coal Co., Robinson Run Mine, Fairmont, WV. U.S. imports of bituminous steam coal, lignite and anthracite were negligible.

TA-W-21,683; Arco Oil and Gas Co., Dallas, TX Operation. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,682; Arco Oil and Gas Co., Plano, TX Research Center. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,103; Arco Oil and Gas Co., Southeastern District Office Lafayette, LA. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,104; Arco Oil and Gas Co., Central District Office, Midland, TX. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,105; Arco Oil and Gas Co., Western District, Bakersfield, CA. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,954; Sealand Freight Services, Anchorage, AK. The workers' firm does not produce an article as required for certification.

TA-W-21,921; PMB Operators, Inc., Erath, LA. The workers' firm does not produce an article as required for certification.

TA-W-22,088; Verlyn Berger Excavating, Lambert, MT. The workers' firm does not produce an article as required for certification.

TA-W-22,132; Enserch Alaska Construction, Inc., Anchorage, AK. The workers' firm does not produce an article as required for certification.

TA-W-21,824; D.B.M. Contractors, Inc., Alaska Department, Federal Way AK. The workers' firm does not produce an article as required for certification.

TA-W-21,851; Goliad Operating Co., Stafford, TX. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-22,228; Haley Well Service, Carmi, IL. The workers' firm does not produce an article as required for certification.

TA-W-21,571; Kestran, Inc., Stafford, TX. The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA-W-22,028; EPIC International, Inc., Pasadena, TX. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification..

TA-W-21,803; Bunton Oil Co., Newton, IL. The workers' firm does not produce an article as required for certification.

TA-W-22,167; Oceanic Bulter, Inc., Morgan City, LA. The workers' firm does not produce an article as required for certification.

TA-W-22,252; Scoggins Construction Co., Norphlet, AR. The workers' firm does not produce an article as required for certification.

TA-W-22,247; National Mechanical, Anchorage, AK. The workers' firm does not produce an article as required for certification.

TA-W-21,919; Oilfield Testers & Equipment Co., Inc., Morgan City, LA. The workers' firm does not produce an article as required for certification.

TA-W-22,352; Gasfield Specialists, Inc., Shinglehouse, PA. The workers' firm does not produce an article as required for certification.

TA-W-22,254; Sohio Construction Co., San Francisco, CA. The workers' firm does not produce an article as required for certification.

TA-W-22,093; Wismer & Becker, Sacramento, CA. The workers' firm does not produce an article as required for certification.

TA-W-22,186; T.M.T. Services, Inc., Lafayette, LA. The workers' firm does not produce an article as required for certification.

TA-W-22,205; Air Management Industries, Newton, NJ. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,204; Witco Corp., Bradford, PA. The workers' firm does not produce an article as required for certification.

TA-W-22,204A; Witco Corp., Woodcliff Lake, NJ. The workers' firm does not produce an article as required for certification.

TA-W-22,217; Delhi Gas Pipeline Corp., Dallas, TX. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,261; Texas Oil and Gas Corp., Dallas, TX. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,310; Allied Amphenol Corp., York, PA. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,358; Kaiser Coal Corp., Mines #1, #2, and #3, Sunnyside, UT. U.S. imports of metallurgical coal are negligible.

TA-W-21,491; Utex Industries, Inc., Houston, TX. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-21,492; Utex Industries, Inc., Weimer, TX. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-22,032; Eureka Crude Purchasing, Inc., Eureka, KS. The

workers' firm does not produce an article as required for certification.

TA-W-22,106; Ark-La Oil and Gas Supply, Co., Inc., Smackover, AR. The workers' firm does not produce an article as required for certification.

TA-W-22,124; Dwight Hotline Energy Reports, Oklahoma City, OK. The workers' firm does not produce an article as required for certification.

TA-W-22,176; Reed Tool Co., Houston, TX. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,678; The Wil Mc Oil Corp., Irving, TX. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,678A; The Will Mc Oil Corp., Hominy, OK. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,621; Enserch, Prudhoe Bay, AK. The workers' firm does not produce an article as required for certification.

TA-W-21,702; Charles E. Hynek, Inc., Dallas, TX. The workers' firm does not produce an article as required for certification.

TA-W-22,153; Industrial Machine Shop, Inc., Williston, ND. The workers' firm does not produce an article as required for certification.

TA-W-21,615; Drag Specialties, Minnetonka, MN. The workers' firm does not produce an article as required for certification.

TA-W-22,096; Acadiana Reporting Service, Inc., Lafayette, LA. The workers' firm does not produce an article as required for certification.

TA-W-21,636; Key Petroleum and Exploration, Inc., Russell, KS. The investigation revealed that criterion (2) has not been met. Employment did not decline during the relevant period as required for certification.

TA-W-22,026; Dresser Industries, Inc., Dresser Pump Div., Huntington Park, CA. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,177; Roy M. Huffington, Inc., International Petroleum Operation, Houston, TX. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,744; Oilfield Equipment Co., Corpus Christi, TX and Operating at Locations in Luling & Freer, TX. The workers' firm does not produce an article as required for certification.

TA-W-22,007; Alamco, Inc., Clarksburg, WV. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,680; ABE Levine Knitting Mills, Inc., Brooklyn, NY. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,924; Petroleum Equipment Tools Co., Houston, TX. The workers' firm does not produce an article as required for certification

TA-W-21,706; Citation Oil and Gas Corp., Houston, TX. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-21,706A; Citation Oil and Gas Corp., Various Locations in TX. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-21,706B; Citation Oil and Gas Corp., Various Locations in OK. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-22,168; Pennzoil Exploration and Production Co., Lafayette, LA. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,169; Pennzoil Product Co., Bradford, PA. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,170; Pennzoil Product Co., Rouseville, PA. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,253; Sheehan Pipeline Construction, Kingsville, TX. The workers' firm does not produce an article as required for certification

TA-W-21,792; Barnette & Sons, Inc., El Dorado, AR. The workers' firm does not produce an article as required for certification

TA-W-22,059; Puckett Energy Co., Denver, CO. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,059A; R.E. Puckett, Denver, CO. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,059B; Pucket Warren Oil, Denver, CO. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,059C; Puckett Investment Co., Denver, CO. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,781; Anglo Alaska Construction, Anchorage, AK. The workers' firm does not produce an article as required for certification

TA-W-21,786; Artic Slope Wright Schuchart-Gregory & Cook, Anchorage, AK. The workers' firm does not produce an article as required for certification

TA-W-21,799; Bredero Price, Seattle, WA. The workers' firm does not produce an article as required for certification

TA-W-21,838; Fairbanks Lumber Supply, Fairbanks, AK. The workers' firm does not produce an article as required for certification

TA-W-21,829; Earth Movers of Fairbanks, Fairbanks, AK. The workers' firm does not produce an article as required for certification

TA-W-21,814; Classic Construction Survey, Anchorage, AK. The workers' firm does not produce an article as required for certification

TA-W-21,825; Doyals Fuel Service, Kenai, AK. The workers' firm does not produce an article as required for certification

TA-W-21,843; Frontier Rock & Sand, Inc., Anchorage, AK. The workers' firm does not produce an article as required for certification

TA-W-21,774; Ahtna Construction & Primary Product Corp, Copper Center, AK. The workers' firm does not produce an article as required for certification

TA-W-TA-W-21,853; Green Construction Co., Anchorage, AK. The workers' firm does not produce an article as required for certification

TA-W-21,433: Hillside Equities, Inc., San Antonio, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,415: Empact Industries, Unit Lock Operatons, Hardware Division, Berlin, CT. The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA-W-21,467: Pittman Moore, Inc., Washington Crossing, NJ. The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA-W-21,425: Gas Co. of New Mexico Permean Pipeline Div., Artesis, NM. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,426: General Electric Consumer Products Services, Ocean, NJ. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-21,260: Bowen Tools, Inc., Williston, ND. The workers' firm does

not produce a article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,331: Catalina, Div. of Kayer Roth Corp., Los Angeles, CA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,252: Allied Products, Division of Carrier Corp., Knoxville, TX. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–21,513: Cleere Operating Co., San Angelo, TX. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–21,326: Bethlehem Steel Corp, Wire Rope Div., Williamsport, PA. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–21,489: Universal Equipment Inc., Lafayette, LA. U.S. imports of oilfield machinery are negligible.

TA–W–21,525: McGraw-Edison Power Systems Div., Cooper Power Systems, Zanesville, OH. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–21,442: Joy Manufacturing Inc., Wichita Falls, TX. U.S. imports of oilfield machinery are negligible.

TA–W–21,522: LTV Steel Tubular Products Youngstown Works Youngstown, OH. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–21,394: Alloy Ball & Seat Co., Inc., Corpus Christi, TX. U.S. imports of oilfield machinery are negligible.

TA–W–21,337: Duquesne Light Co., Warwick Mine, Greensboro, PA. U.S. imports of steam coal are negligible.

TA–W–21,341: General Motors Corp., CPC Doraville, Doraville, GA. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–21,872: Hustlers, Inc., Anchorage, AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,878: J.B. Mechanical, Lynnwood, WA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,870: Houston Contracting, Anchorage, AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,865: Holmes Narvel Services Inc., Anchorage, AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,698: C.E. Natco, Williston, ND. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,884: Kemco Inc., Kenai, AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–22,207: Amoco Production Co., Farmington, NM. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–21,771: Zapota Gulf Marine Corp., Harvey, LA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,710: Delta Hatcherier, Inc., Lake City, FL. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–22,184: Dresser Industries Inc., Security Div. Dallas, TX. U.S. imports of oilfield machinery are negligible.

TA–W–21,939: R.W. Brasseux & Associates Inc., Erata, LA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–22,154: Cooper Industries Industrial Machinery Div., Mesquite, TX. U.S. imports of oilfield machinery are negligible.

TA–W–22,085: Trico Industries, Inc., Bradford, PA. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–21,888: LHD & Associates, Anchorage, AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,889: The Steven Corp, Kenai, AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,885: Kodiak Oilfield Haulers, Anchorage, AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,882: Johnson-Brisk, Inc., Nome, AK. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–22,172 & 22,173: Petroleum Information, Casper, WY, Billings, MT. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,644: Mansell Brine Sales, Inc., Midland, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,660: Prestolite Wire Corp., Port Huron MI. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–21,822: Backbird Co., Shreveport, LA. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–21,594: A.P. Parts Co., Toledo, OH. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–21,646: Maxus Exploration Co., Denver, CO. The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–21,699: C&F Offshore Service, Inc., Kneeport, TX. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,764: Summit Oil Co., Denver, CO. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–21,676: Vernition Medial Products, Carlstadt, NJ. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–21,599: Bibbins & Rice Electronic, Inc., Morgan City, LA. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,794: Beebe & Beebe Inc., El Dorado, AR. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–21,165: National Oilwell, Garlant, TX. U.S. imports of oilfield machinery are negligible.

TA–W–21,855; H & B Surveyors, Anchorage, AK. The workers' firm does produce an article as required for certification.

TA–W–21,772; AIC/Martin, Anchorage, AK. The workers' firm does produce an article as required for certification.

TA–W–21,750; Rebel Geophysical, Inc., Denver, CO. Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA–W–21,859; Haddad & Brooks, Inc., Washington, PA. A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–22,080; Terrell's Tractor & Well Service, Grayville, IL. A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–22,306; Teledyne Turner Tube, Cranbury, NJ. A certification was issued covering all workers separated on or after December 8, 1987.

TA–W–22,113; Brazos Production Co., Stafford, TX. A certification was issued covering all workers separated on or after November 11, 1987.

TA–W–22,301; Pool Company (Texas), Inc., Special Service Div., Midland, TX. A certification was issued covering all workers separated on or after December 7, 1987.

TA–W–21,545; Wilson Drilling Co., Albion, IL. A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,531; Russell Pierce Drilling Co., Greenville, KY. A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,514; Dawn Drilling Co., Shreveport, LA. A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,470; Precesion Exploration Co., Inc., Olney, IL. A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,412; Dual Drilling Co., Dallas, TX. A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,493; United Energex, Inc., Cisco, TX. A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,517; Geosearch, Inc., Wichita, KS. A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,517A; Geosearch, Inc., Great Bend, KS. A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,413; Dwight Brehm Resources, Mt. Vernon, IL. A certification was issued covering all workers separated on or after October 18, 1985 and before January 1, 1988.

TA–W–21,395; Alloytek, Inc., Department 124, Grandville, MI. A certification was issued covering all workers separated on or after January 1, 1988.

TA–W–21,384; Star Sportwear Manufacturing Co., Western Ave., Lynn, MA. A certification was issued covering all workers separated on or after October 17, 1987 and before July 30, 1988.

TA–W–21,971; Spencer Steam and Well Service, Stinnett, TX. A certification was issued covering all workers separated on or after January 1, 1987.

TA–W–22,029; East Tennessee Consultants, Inc., Sunbright, TN. A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,589; Three Star Drilling & Producing Corp., Lawrenceville, IL. A certification was issued covering all workers separated on or after October 21, 1987.

TA–W–21,857; H.F. Hatcher & Son, Inc., Smackover, AR. A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,606; Chevron Geosciences Co., Houston, TX. A certification was issued covering all workers separated on or after October 20, 1987 and before June 16, 1989.

TA–W–21,693; Baker Oil Treating, Smackover, AR. A certification was issued covering all workers separated on or after January 1, 1986.

TA–W–21,669; Swenson Drilling, Inc., Sidney, MT. A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–22,123; Dresser Atlas, Mt. Vernon, IL. A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,727; J.R. Drilling Co., Mt. Pleasant, MI. A certification was issued covering all workers separated on or after January 1, 1986 and before April 30, 1986.

TA–W–22,002; Wold Drilling, Inc., Casper, WY. A certification was issued covering all workers separated on or after October 1, 1985 and before March 1, 1987.

TA–W–21,875; I.C. Gas Amcana, Inc., Tulsa, OK. A certification was issued covering all workers separated on or after November 15, 1987.

TA–W–21,657; Phillips Petroleum Co., Permian Basin Regional Office, Odessa, TX. A certification was issued covering all workers separated on or after October 31, 1987.

TA–W–21,732; Lewis Casing Crews, Inc., Odessa, TX. A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,719; Flagstar, Inc., Olney, IL. A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,582; Petrograph Mudlogging, Giddings, TX. A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,597; Basin Well Servicing, Inc., Roosevelt, UT. A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,616; M–I Drilling Fluids (Formerly Dresser Magcobar), Shreveport, LA. A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA–W–21,779; American Drilling Co., San Antonio, TX. A certification was issued covering all workers separated on or after January 1, 1988.

I hereby certify that the aforementioned determinations were issued during the months of January 1989 and February 1989. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213, during normal business hours or will be mailed to persons to write to the above address.

Dated: March 14, 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–7167 Filed 3–24–89; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21,525]

McGraw-Edison Power Systems, Cooper Systems; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at McGraw-Edison Power Systems, Cooper Systems, Zanesville, Ohio. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–21,525; McGraw-Edison Power Systems, Cooper Systems, Zanesville, Ohio (February 28 1989)

Signed at Washington, DC this 14th day of March 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–7159 Filed 3–24–89; 8:45 am]

BILLING CODE 4510–30–M

Noble Drilling Corp. and Temple Drilling Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA–W–21,912, Noble Drilling Corporation, New Orleans, LA; TA–W–21,913, Noble Drilling Corporation,

Williston, N.D., and TA–W–21,912A, Temple Drilling Company, Houston, Texas, TA–W–21,912A, Temple Drilling Company, Broussard, LA.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued Certifications of Eligibility to Apply for Worker Adjustment Assistance on January 31, 1989 applicable to all workers of Noble Drilling Corporation, New Orleans, Louisiana and Williston, North Dakota. The certifications will soon be published in the **Federal Register.**

Noble Drilling Corporation and the Temple Drilling Company provided new information to the Department which shows that the Temple Drilling Company meets all the requirements of a predecessor-in-interest firm to Noble Drilling Corporation. Noble Drilling Corporation purchased the assets of Temple Drilling Company, Houston, Texas in January 1988. Temple Drilling provided contract drilling services to unaffiliated firms in the oil and gas industry and meets all the worker group requirements of section 222 of the Trade Act and the retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988.

The notice, therefore is amended by including coverage under TA–W–21,912 for workers of Temple Drilling Company, a predecessor-in-interest firm to Noble Drilling Corporation.

The intent of the certification is to cover all workers of Noble Drilling Corporation, New Orleans, Louisiana and Williston, North Dakota and its predecessor-in-interest firm, Temple Drilling Company, Houston, Texas and Broussard, Louisiana. The amended notice applicble to TA–W–21,912 and TA–W–21,913 is hereby issued as follows:

All workers of Noble Drilling Corporation, New Orleans, Louisiana and Williston, North Dakota and its predecessor-in-interest firm, Temple Drilling Company, Houston, Texas and Broussard, Louisiana who became totally or partially separated from employment on or after October 1, 1985 and before June 30, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this March 10, 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89–7161 Filed 3–24–89; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21,742]

Norcon, Inc., Anchorage, AK; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Norcon, Incorporated, Anchorage, Alaska. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–21,742; Norcon, Incorporated, Anchorage, Alaska (March 3, 1989)

Signed at Washington, DC, this 14th day of March 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–7156 Filed 3–24–89; 8:45 am

BILLING CODE 4510–30–M

[TA–W–21,034]

Permian Corp., Hays, KS; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Permian Corporation, Hays, Kansas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–21,034; Permian Corporation, Hays, Kansas (January 5, 1989)

Signed at Washington, DC, this 14th day of March 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–7160 Filed 3–24–89; 8:45 am

BILLING CODE 4510–30–M

[TA–W–21,931]

Prudential Oil & Gas Co.; Houston, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administration reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Prudential Oil & Gas Company, Houston, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–21,931: Prudential Oil & Gas Company, Houston, Texas (March 13, 1989)

Signed at Washington, DC this 14th day of March 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 7157 Filed 3–24–89; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21,533 and TA–W–21,533A]

Santa Fe Drilling Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) and the retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 13, 1989 applicable to all workers of Santa Fe Drilling Company, Oklahoma City, Oklahoma.

The employment, sales and production data provided by Santa Fe Drilling included both locations (Odessa, Texas and Oklahoma City, Oklahoma) according to new information supplied by the company. Worker separations occurred at both locations, beginning in 1985. The notice, therefore, is amended by including the Odessa, Texas location of the Santa Fe Drilling Company under subject certification.

The amended notice applicable under to TA–W–21,533 is hereby amended:

All workers of Santa Fe Drilling Company, Oklahoma City, Oklahoma and Odessa, Texas who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of March 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89–7162 Filed 3–24–89; 8:45 am]

BILLING CODE 4510–30–M

Shelby Drilling Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

[TA-W-22,069 and TA-W-22,069A]

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certificate of Eligibility to Apply for Worker Adjustment Assistance on January 12, 1989 applicable to all workers of Shelby Drilling Company, Englewood, Colorado.

Based on new information from the company, additional workers were separated from Shelby Drilling Company, at various locations in the State of Wyoming during the period applicable to the petition. The notice, therefore is amended by including all locations of Shelby Drilling in Wyoming.

The amended notice applicable to TA-W-22,069 is hereby issued as follows:

All workers of Shelby Drilling Company, Englewood, Colorado and all workers of Shelby Drilling Company in the State of Wyoming who became totally or partially separated from employment on or after October 1, 1965 and before January 1, 1989 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of March 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89-7163 Filed 3-24-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-31-C]

Gorenty Tunneling Co.; Petition for Modification of Application of Mandatory Safety Standard

Gorenty Tunneling Company, Walnut Street, Middleport, Pennsylvania 17953 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Gorenty Tunneling Company Slope (I.D. No. 36-07367) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 26, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: March 21, 1989.

[FR Doc. 89-7171 Filed 3-24-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-26-C]

Mineraltec Corp.; Petition for Modification of Application of Mandatory Safety Standard

Mineraltec Corporation, RT 3 Box 101-A, Winfield, Alabama 35594 has filed a petition to modify the application of 30 CFR 75.313 (methane monitors) to its Mine No. 3 (I.D. No. 01-02779) located in Marion County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on flat bottom cutters used to load coal at the face. The monitor is required to be kept operative and properly maintained and frequently tested.

2. No methane has been detected in the mine.

3. The 35L flat bottom cutters are permissible DC-powered machines, and will be used approximately 30% of the time.

4. As an alternate method, petitioner proposes to use hand-held methane detectors instead of continuous methane monitors on flat bottom cutters. In further support of this request, petitioner states that—

(a) Each coal cutter would be equipped with a hand-held methane detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal cutter in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. The use of the MX 240 would assure continuous monitoring of the mine atmosphere for any undetected methane buildup while cutting; and

(c) Each detector would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The detector would also be calibrated monthly.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 26, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: March 17, 1989.

[FR Doc. 89-7172 Filed 3-24-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Arts Advisory Panel (Performing Arts/Theater Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion

Arts Advisory Panel (Performing Arts/Theater Section) to the National Council on the Arts will be held on May 17–18, 1989, from 9:00 a.m.–6:00 p.m. and May 19, 1989, from 9:00 a.m.–5:30 p.m. in Room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 17, 1989, from 9:00 a.m.–10:30 a.m. and May 19, 1989, from 3:15 p.m.–5:30 p.m. The topics for discussion will be policy issues.

The remaining sessions of this meeting on May 17, 1989, from 10:30 a.m.–6:00 p.m., May 18, 1989, from 9:00 a.m.–6:00 p.m.; and May 19, 1989, from 9:00 a.m.-3:15 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Rgister** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

March 20, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–7133 Filed 3–24–89; 8:45 am]

BILLING CODE 7537–01–M

Expansion Arts Advisory Panel (Performing Arts/Dance and Music Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Performing Arts/Dance and Music Section) to the National Council on the Arts will be held on April 18–19, 1989, from 9:00 a.m.—6:00 p.m. and April 20, 1989, from 9:00 a.m.—5:30 p.m. in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on April 18, 1989, from 9:00 a.m.—10:30 a.m. and April 20, 1989, from 3:15 p.m.—5:30 p.m. The topics for discussion will be policy issues.

The remaining sessions of this meeting on April 18, 1989, from 10:30 a.m.—6:00 p.m., April 19, 1989, from 9:00 a.m.—6:00 p.m.; and April 20, 1989, from 9:00 a.m.—3:15 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

March 20, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–7134 Filed 3–24–89; 8:45 am]

BILLING CODE 7537–01–M

Federal Advisory Committee on International Exhibitions; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions will be held on April 14, 1989, from 10:00 a.m.–5:00 p.m. in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will include the future role of the committee and guidelines.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

March 20, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–7135 Filed 3–24–89; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

Illinois Power Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Illinois Power Company [1] (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc., (the licensees)for Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

Environmental Assessment

Identification of Proposed Action

The licensees have requested a change to the Operating License to reflect an adjustment of the ownership interests in Clinton Power Station (CPS) which would occur if Soyland Power Cooperative (Soyland) merges with Western Illinois Power Cooperative (WIPCO) and WIPCO ceases to exist as a separate entity. Soyland and WIPCO are minority owners of CPS with a combined ownership share of less than 15%. Wipco and Soyland, in addition to IP are currently licensees for CPS. Therefore, the merger of Soyland and WIPCO will not result in the transfer of the license to any entity not currently a licensee for CPS. Soyland will assume full responsibility for all CPS obligations currently being discharged by WIPCO. The proposed license amendment will not change the share of ownership that IP has in CPS, will not change IP's

[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

commitments related to capital and operating and maintenance costs, and will not affect IP's role as project manager.

This revision to the Clinton Power Station license would be made in response to the licenses' application for amendment dated November 2, 1988.

The Need for the Proposed Action

The change in license is necessary to remove the name of Western Illinois Power Cooperative, Inc. where that company is referred to in the license for CPS. This change is required to reflect the proposed merger of Soyland and WIPCO into one company to be known as Soyland Power Cooperative, Inc.

Environmental Impacts of the Proposed Action

The Commission has concluded that these changes do not significantly increase the probability or consequences of any accident or increase the potential for a radiological release as the revision represents an administrative change which will not affect plant operation or maintenance. The change does not affect the responsibility of IP to operate Clinton, Unit 1 in accordance with standards and regulations to maintain occupational exposure levels "as low as reasonably achievable." With regard to non-radiological impacts, the proposed amendment represents no significant non-radiological environmental impacts for the same reason.

Accordingly, the Commission findings in the "Final Environmental Statement related to the operation of Clinton Power Station, Unit No. 1" dated May 1982 regarding radiological environmental impacts from the plant during normal operation or after accident conditions, are not adversely altered by this action.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on November 22, 1988 (53 FR 47287).

No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Actions

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impact need not be evaluated.

Alternative Use of Responses

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated May 1982 related to this facility.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request of November 2, 1988, and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement of the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated November 2, 1988, and the Final Environmental Statement for the Clinton Power Station dated May 1982, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20055 and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland this 21st day of March 1989.

For the Nuclear Regulatory Commission.

Paul C. Shemanski,

Acting Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89-7201 Filed 3-24-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL-1R2 and 50-444-OL-1R2; ASLBP No. 88-858-01-OL]

Public Service Co. of New Hampshire, *et al.* Seabrook Station, Units 1 and 2; Evidentiary Hearing Concerning On-Site Emergency Planning and Safety Issues

Before Administrative Judges: Peter B. Bloch, Chair; Emmeth A. Luebke; Dr. Jerry Harbour.

A public evidentiary hearing concerning emergency planning safety issues shall be held May 2-5, 1989, from 9 am to 5 pm each day, at the Auditorium, Thomas P. O'Neill Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts. The issues include the elapsed time that will occur for alerting and notifying the public and the acceptability of sirens emitting a 134 dBC alerting tone. If necessary, the hearing will continue into the following week.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chair.

[FR Doc. 89-9202 Filed 3-24-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-425A]

Georgia Power Co., et al.; (Plant Vogtle, Unit 2) Reevaluation of Antitrust Finding

Notice is hereby given that counsel for Oglethorpe Power Corporation has requested a reevaluation by the Director of the Office of Nuclear Reactor Regulation of the "Finding of No Significant Change" pursuant to the operating license antitrust review of the captioned nuclear unit. After further review, I have decided not to change my finding.

A copy of my finding, the request for reevaluation, and my reevaluation are available for public examination and copying, for a fee, at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Bethesda, Maryland, this 22nd day of March, 1989.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 89-7326 Filed 3-24-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632-0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on March 2, 1989 (54 FR 8855). Individual authorities established or revoked under Schedule A, B, or C between February 1, 1989, and February 28, 1989, appear in a listing below. Future notices will be published on the

fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A authorities were established or revoked during February.

Schedule B

No Schedule B authorities were established or revoked during February.

Schedule C

Department of Commerce

One Deputy Director to the Director for Private Sector Initiatives. Effective February 10, 1989.

Five Confidential Assistants to the Director of the Office of Executive Programs. Effective February 10, 1989.

Two Confidential Assistants to the Secretary of Commerce. Effective February 16, 1989.

Department of Defense

One Private Secretary to the Director for Strategic Defense Initiative Organization. Effective February 27, 1989.

Department of Energy

One Special Assistant to the Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective February 6, 1989.

One Special Assistant to the Assistant Secretary for International Affairs and Energy Emergencies. Effective February 6, 1989.

One Administrative Assistant to the Director of the Office of External Affairs. Effective February 16, 1989.

Department of the Interior

One Director, External Affairs Office to the Commissioner of Reclamation. Effective February 23, 1989.

Department of Labor

One Special Assistant to the Assistant Secretary for Policy. Effective February 7, 1989.

One Confidential Assistant to the Secretary of Labor. Effective February 27, 1989.

One Confidential Assistant to the Solicitor of Labor. Effective February 27, 1989.

Department of State

One Staff Assistant to the Secretary of State. Effective February 3, 1989.

One Staff Assistant to the Assistant Secretary for Legislative Affairs. Effective February 13, 1989.

Department of the Treasury

One Deputy Assistant Secretary for Policy Review and Analysis to the Assistant Secretary for Policy Development. Effective February 24, 1989.

One Director of Scheduling to the Assistant Secretary for Policy Development. Effective February 24, 1989.

Office of Personnel Management

One Staff Assistant to the Director of the Office of Executive Administration. Effective February 27, 1989.

United States Trade Representative

One Confidential Assistant to the United States Trade Representative. Effective February 21, 1989.

Authority: 5 U.S.C. 3301, 3302; E.O. 10555, 3 CFR 1954–1958 Comp., P. 218.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 89–7173 Filed 3–24–89; 8:45 am]

BILLING CODE 6325–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Protected Areas Amendments

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of proposed amendments to the protected areas provisions of the Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan.

DATES AND ADDRESSES: The public comment period will run until the time of Council decision at the Council's April 12–13, 1989 meeting. Public hearings on the proposed amendments will be held in each of the four Northwest states as follows:

March 29, 1989, 1:30 p.m., Council offices, 1301 Lockey, Helena, Montana 59620;

March 29, 1989, 1:30 p.m., Council offices, 851 S.W. 6th Ave., Suite 1100, Portland, Oregon 97222;

March 30, 1989, 10:00 a.m., Council offices, 450 West State, Boise, Idaho 83720; and

April 5, 1989, 10:00 a.m., Council offices, 809 Legion Way, S.E. Olympia, Washington 98504–1211;

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Nortwest Power Act, 16 U.S.C. 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The Council adopted the Northwest Conservation and Electric Power Plan (power plan) on April 27, 1983. The program and the power plan have been amended from time to time since then. Major revisions of the program were adopted in 1984 and 1987, and a major revision of the power plan was adopted in 1986. On August 10, 1988, the Council adopted amendments pursuant to section 4(d)(1) of the Northwest Power Act to amend the program and the power plan to incorporate measures to protect critical fish and wildlife habitat from new hydropower development. The protected areas provisions adopted in August require a vote of the Council to make corrections that "change the protected or unprotected status or the reason for protection of a river reach." The amendments proposed in this notice, as described more fully below, would correct the protected areas data base and change the status or reason for protection of a river reach.

SUPPLEMENTARY INFORMATION: The protected areas rule contemplates that amendments to the protected areas will, for the most part, be made according to a regular schedule which is announced from time to time in the Council's monthly newsletter, *Update!* (see section 1303(e) of protected areas rule). However, the rule also recognizes that, in some instances, early consideration may be required.

The proposed amendments included in this rulemaking are believed to be minor technical corrections and have been determined by the Council to be suitable for early consideration. The Council has not announced regular schedule for other amendments.

Each of the proposed amendments has been reviewed and approved by the relevant state fish and wildlife agency.

Proposed Amendments

The following is a summary, by state, of the proposed amendments.

1. Idaho Corrections

Deep Creek in Adams County is shown on the Council's protected areas list as being entirely in a wilderness area and therefore protected by federal law. The lower portion of Deep Creek is, in fact, outside the wilderness area. The proposed change would show the lower portion of Deep Creek outside the wilderness area as being unprotected.

Deadwood River, a 15.7 mile-long tributary of the South Fork of the

Payette River, was shown as protected on all protected areas lists released to the public during the protected areas rulemaking. However, it was accidentally omitted from the final computer printout placed before the Council when the protected areas rule was adopted. As far as we are aware, the river has no active hydro projects pending on it, although, in the past, projects have been proposed at two sites on the river. The river is proposed for protection for resident fish.

2. Montana corrections

Three minor tributaries to the Clark Fork River were assigned the wrong river reach numbers in the data base. All of these reaches were properly named and correctly identified on the protected areas maps available in Montana at the time of the protected areas rulemaking.

The data base shows *Eddy Creek* across the Thompson River as protected. Instead, it should show the Eddy Creek along the north side of the Clark Fork River just upstream of Superior, Montana, between Second Creek and Deep Creek as protected. The proposed correction would remove protected status from the Eddy Creek near the Thompson River and designate the Eddy Creek near Superior for protected status.

The data base shows *Mayo Creek* near St. Regis as protected. Instead, it should show *Mayo Gulch* on the lower Clark Fork just west of St. Regis, which is a few miles away in the same area. The proposed correction would remove protected status from Mayo Creek and designate Mayo Gulch for protected status.

The data base correctly shows *Rock Creek* (a tributary to the lower Clark Fork across from O'Keefe Creek below Missoula) as protected, but assigns it the wrong river reach identification number. The number currently assigned relates to a different Rock Creek. The proposed correction would assign the proper identification number to the reach.

The *East Fork, Rock Creek* (a tributary of the Rock Creek which joins the Clark Fork near the Bull River) was inadvertently omitted from the protected areas designations. The reach was proposed for protected area status and was shown as protected on the Montana protected areas maps. The proposed change would designate the reach as protected for resident fish.

3. Oregon Corrections

Walker Creek, a tributary which joins the Nestucca River near its headwaters, was intended to receive protected status. However, in the data base Walker Creek was confused with the headwaters of the Nestucca, which are located close to Walker Creek. As a result, the headwaters of the Nestucca are mislabelled "Walker Creek" and are protected for anadromous fish. The proposed change would place Walker Creek in the proper location as a separate tributary protected for anadromous fish. The headwaters of the Nestucca would also continue to be protected for anadromous fish up to the McGuire Reservoir, but would be correctly identified as the Nestucca, not Walker Creek. Walker Creek was included in the Oregon Rivers Initiative and is therefore protected under state law.

4. Washington corrections

Prior to the adoption of the Council's protected areas rule in August, 1988, an application for license was pending for a project located in the 4.8 mile reach of *Wells Creek* between its month and Bar Creek. Wells creek is a tributary of the North Fork of the Nooksack River in the Puget Sound Basin. The reach was designated for protection for resident wildlife, primarily spotted owls. Spotted owl habitat exists on the east side of the creek only. The proposed project will have its powerhouse on the west side of the creek, and other wildlife concerns can be addressed as part of the FERC license. The proposed amendment will change the project area only from protected to unprotected status. The remainder of the reach will remain protected for resident wildlife.

Canyon Creek is a tributary to the Middle Fork of the Nooksack River in the Puget Sound Basin. The lower portion of the reach (up to river mile 1.9) is protected for anadromous fish and resident wildlife. That portion of the reach upstream of river mile 1.9 is protected for wildlife and resident fish. The proposed change would remove protection for wildlife reasons. The reach would be protected from its mouth to river mile 1.9 for anadromous fish, and from river mile 3.66 to the headwaters for resident fish.

FOR FURTHER INFORMATION: For further information, including river reach numbers for the affected reaches, please call Dr. Peter Paquet in the Council's central office, at (503) 222–5161 (toll free 1–800–222–3355 in Idaho, Montana and Washington or 1–800–452–2324 in Oregon). After final action, a copy of the final amendments, the Council's response to comments, and the Protected Areas List will be available on request. Those who wish to receive a copy of any of these documents should contact Judi Hertz at the Council's central office, 851 SW. Sixth Avenue, Suite 1100, Portland, Oregon, 97204 or the above telephone numbers.

Edward Sheets,

Executive Director.

[FR Doc. 89–7124 Filed 3–24–89; 8:45 am]

BILLING CODE 0000–00–M

Columbia River Basin Fish and Wildlife Program

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of new deadline for public comment period regarding spill after 1989.

SUMMARY: On November 23, 1988, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839b(d)(1)) the Pacific Northwest Electric Power and Conservation Planning Council (Council) published notice of proposed amendments to the Columbia River Basin Fish and Wildlife Program (program), to incorporate the spill provisions of an agreement negotiated by the region's state and federal fish and wildlife agencies, Indian tribes, Bonneville, and the Pacific Northwest Utilities Conference Committee, for spills at Lower Monumental, Ice Harbor, John Day, and The Dalles Dams, for the ten-year period beginning December 31, 1988 (agreement). On February 8, 1989, after hearings and public comment, the Council adopted amendments incorporating the spill standards of the agreement (section III) for 1989 only. The Council left this amendment proceeding open to allow further public comment through April 14, 1989, solely regarding the advisability of adopting the agreement's spill provisions for the period after 1989. The Council noted that "The Council may shorten the comment period to allow the Council to act at its April 12–13 meeting if the agreement is expected to be signed before April 14." The Council has received notice that the parties to the agreement expect to sign the agreement on or before April 10, 1989. Therefore, to allow the Council to act at its April 12–13 meeting, the Council hereby shortens the comment period.

Public Comment Regarding Spill for the Period After 1989

The Council will receive comment regarding the advisability of incorporating the agreement's spill standards for the period after 1989 through the full term of the agreement, if

received in the Council's central office, 851 SW. Sixth Avenue, Suite 1100, Portland, Oregon 97204, by 5 p.m. Pacific time on April 10, 1989. Comments should be submitted to Dulcy Mahar, Director of Public Involvement, at this address. Comments should be clearly marked "Spill Comments."

After the close of written comment, the Council may hold consultations with interested parties to clarify points made in written comment. Consultations may be held up to the time of the Council's final action in this rulemaking.

For a Copy of the Proposed Amendments, or for Further Information: Contact Judi Hertz at 851 S.W. Sixth Avenue, Suite 1100, Portland, Oregon, 97204, or at (503) 222–5161, toll free 1–800–222–3355 in Idaho, Montana, and Washington or 1–800–452–2324 in Oregon.

Edward Sheets,

Executive Director.

[FR Doc. 89–7123 Filed 3–24–89; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–26650; File No. SR–NASD–89–11]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities in Small Order Execution System

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 17, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposed rule change as one that constitutes a stated practice under section 19(b)(3)(A)(i) of the Act, which renders the rule change effective upon its receipt by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(3)(A)(i) under the Act, the NASD is filing a stated practice with respect to section (a), paragraph 7, under the Rules of Practice and Procedures for the Small Order Execution System ("SOES" or "SOES Rules") in order to reclassify the groups of NASDAQ/National Market System ("NMS") securities included in the SOES maximum order size tier levels.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The maximum order size limits for NASDAQ/NMS securities traded on SOES ("SOES tier levels") was established by the NASD in File No. SR–NASD–88–1, approved by the Commission in Securities Exchange Act Release No. 34–25791 (June 9, 1988) and is set forth in the NASD Manual as a footnote to section (a), paragraph 7, of the SOES Rules. The footnote indicates that the maximum order size for NASDAQ/NMS securities traded on SOES shall be 1,000, 500, or 200 shares and that the applicable maximum order for each NASDAQ/NMS security will be established by applying the following formula. A 1,000 share maximum order size will be applied to those NASDAQ/NMS securities that have an average daily non-block volume of 3,000 shares per day, a bid price that is less than or equal to $100, and three or more market makers; a maximum order size of 500 shares will be applied to those NASDAQ/NMS securities with an average daily non-block volume of 1,000 shares a day, a bid price that is less than or equal to $150, and two or more market makers. Finally, a 200 share maximum order size will be applied to those NASDAQ/NMS securities with an average daily non-block volume of less than 1,000 shares a day, a bid price that is less than or equal to $250, and less than two market makers.

In pertinent part, the footnote also indicates that the maximum order size for individual NASDAQ/NMS securities "may be reclassified from time to time depending upon unique circumstances as determined by the Association." A review of the SOES tier levels for each NASDAQ/NMS security as of December 30, 1988, was conducted by the NASD Board of Governors ("Board").

Using trading data from the fourth quarter of 1988 and the aforementioned trading characteristics formula for each tier. In reviewing the SOES tier levels applicable to each NASDAQ/NMS security, the Board determined that changes in the NASDAQ/NMS securities included in each SOES tier level should be implemented per the current formula calculation for each tier, with the exception that no security would be permitted to move more than one tier level.

Based on the Board's review, 575 issues required a SOES level change out of a total of 2,846 NASDAQ/NMS securities, with the SOES tier level increased for 358 NASDAQ/NMS issues and decreased for 217 issues. The SOES tier level changes will be implemented on March 17, 1989, pursuant to NASD Notice to Members 89–29 (March 1989).

The NASD believes the proposed rule change is consistent with section 15 A(b)(6) under the Act which mandates, in pertinent part, that the rules of the NASD be designed to promote just and equitable principles of trade, facilitate securities transactions and "to remove impediments to and perfect the mechanism of a free and open market and a national market system."

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4 thereunder in that it is a stated practice with respect to the implementation of the SOES tier levels. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, veiws, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 17, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 20, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-7186 Filed 3-24-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26651; File No. SR-NASD-89-8]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to NASD Code of Arbitration Procedure

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), ("Act") notice is hereby given that on March 14, 1989 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one constituting a stated policy, practice, or interpretation under section 19(b)(3)(A)(i) of the Act, which renders the proposed rule change effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed change to Part I, Section 1 of the NASD Code of Arbitration Procedure corrects the reference therein from Article IV, section 2(b) of the NASD By-Laws to properly refer to the currently applicable provision of the NASD By-laws, Article VII, section 1(a)(3). The full text of the proposed rule change is as follows: (material to be deleted is in brackets; material to be added is underlined):

PART I. Administrative Provisions

Matters Eligible for Submission

Sec. 1. This Code of Arbitration Procedure is prescribed and adopted pursuant to Article [IV, Section 2(b)] *VII, Section 1(a)(3)* of the By-Laws of the National Association of Securities Dealers, Inc., (the Association) for the arbitration of any dispute, claim or controversy arising out of or in connection with the business of any member of the Association, with the exception of disputes involving the insurance business of any member which is also an insurance company:

(1) between or among members;

(2) between or among members and public customers, or others; and

(3) between or among members registered clearing agencies with which the Association has entered into an agreement to utilize the Association's arbitration facilities and procedures, and participants, pledgees or other persons using the facilities of a registered clearing agency, as these terms are defined under the rules of such a registered clearing agency.

The full text of the proposed rule change to Part III, Section 12(a) of the NASD Code of Arbitration Procedure is as follows:

* * * * *

PART III. Uniform Code of Arbitration

Required Submission

Sec. 12.(a) Any dispute, claim or controversy eligible for submission under Part I of this Code between a customer and a member and/or associated person arising in connection with the business of such member or in connection with the activities of such associated persons shall be arbitrated under this Code, as provided by any duly executed and enforceable written agreement [*] or upon the demand of the customer.

[*This subsection is not intended to conflict with the decision of the United States Supreme Court in *Wilko v. Swan*, 346 U.S. 427 (1953), which specifies that a customer of a broker-dealer does not waive the protections of the securities acts by an agreement to arbitrate future controversies. Thus, the Association will, in applicable cases, require a member to seek an order under the United States Arbitration Act to determine whether a particular disute is properly arbitrable in view of *Wilko v. Swan.*]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed change to Part I, section 1 of the NASD Code of Arbitration Procedure corrects the reference therein from Article IV, section 2(b) of the NASD By-Laws to properly refer to the currently applicable provision of the NASD By-Laws, Article VII, section 1(a)(3).

The proposed change to Part III, section 12(a) of the NASD Code of Arbitration Procedure would delete a footnote which properly reflected NASD policy in light of the applicable law as of January 14, 1972, the date of the footnote's original filing with the Commission. Due to recent developments in the law which have encouraged the use of securities industry arbitration and which have for the most part eliminated the necessity for resort to judicial determination concerning the arbitrability of disputes, the NASD has determined to delete the referenced footnote to reflect its current policy and to prevent unnecessary resort to the courts on the part of participants in the arbitration process.

The proposed rule change is consistent with the provisions of section 15A(b)(6) of the Securities Exchange Act of 1934, which requires that the rules of the Association be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that this rule change does not impose any burden on competition not necessary or

appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD states that the proposed rule change constitutes a stated policy practice, or interpretation with respect to the administration of the NASD Code of Arbitration Procedure. The NASD accordingly has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act. As such, it has become effective upon filing pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 under the Act.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 17, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: March 20, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–7187 Filed 3–24–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16880; 812–7215]

Boston Financial Qualified Housing Tax Credits L.P. IV, a Limited Partnership and Arch Street IV, Inc.; Application

March 20, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Boston Financial Qualified Housing Tax Credits L.P. IV, a Limited Partnership, a Massachusetts limited partnership, (the "Partnership") and its managing general partner, Arch Street IV, Inc., a Massachusetts corporation ("Managing General Partner").

Relevant 1940 Act Sections: Exemption under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicants seek an order exempting the Partnership from all provisions of the 1940 Act and the rules thereunder to permit the Partnership to invest in other limited partnerships that in turn will engage in the development, rehabilitation, ownership and operation of housing for low and moderate income persons.

Filing Date: The application was filed on January 6, 1989, and amended on March 20, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 13, 1989. Request a hearing in writing giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 101 Arch Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, at (202) 272–3026 or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The Partnership was organized on March 10, 1989, under the Uniform Limited Partnership Act of the Commonwealth of Massachusetts as a vehicle for equity investment in apartment complexes to be qualified, in the opinion of counsel, for the low income housing tax credit (the "Low Income Housing Credits") under the Internal Revenue Code of 1986, as amended ("Code"). An unlimited amount of the aggregate capital contributions of the limited partners ("Limited Partners") of the Partnership may be invested in subsidized apartment complexes that will be qualified for the Low Income Housing Credits, although it is the initial expectation that the Partnership will invest as much as possible of its net proceeds in non-subsidized apartment complexes.

2. The Partnership will operate as "two-tier" entity, i.e., the Partnership, as a limited partner, will invest in other limited partnerships ("Local Limited Partnerships") which, in turn, will engage in the development, rehabilitation, ownership and operation of apartment complexes in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974) ("Release No. 8456"). The Partnership's investment objectives are: (i) To provide current tax benefits in the form of tax credits which Qualified Investors (defined herein) may use to offset their federal income tax liability; (ii) to preserve and protect the Partnership's capital; (iii) to provide limited cash distributions which are not expected to constitute taxable income during Partnership operations; and (iv) to provide cash distributions from sale or refinancing transactions, as defined in the Partnership's partnership agreement (the "Partnership Agreement").

3. The Partnership will normally acquire at least a 90% interest in the cash distributions, profits, losses and tax credits of the Local Limited Partnerships, with the balance remaining with the local general partners. However, in certain cases, at the discretion of the Managing General

Partner, the Partnership may acquire a lesser interest in a Local Limited Partnership. Should the Partnership invest in any Local Limited Partnership in which it acquires less than 50% of the limited partnership interest, the Partnership Agreement will provide that the Partnership will have at least a 50% vote to: amend such partnership agreement of such Local Limited Partnership; dissolve such Local Limited Partnership; remove the local general partner and elect a replacement; and approve or disapprove the sale of substantially all of the assets of such Local Limited Partnership. In addition, the Partnership will require that the Local Limited Partnership agreements provide to the limited partners of the Local Limited Partnerships substantially all of the rights required by Section VII of the guidelines adopted by the North American Securities Administrators Association, Inc. ("NASAA").

4. On December 30, 1988, the Partnership filed a registration statement under the Securities Act of 1933 (the "Securities Act") for the sale of up to 60,000 units of Limited Partnership interest ("Units") at $1,000 per Unit with a minimum subscription of five units ($5,000) per investor.

5. Subscriptions for Units must be approved by the Managing General Partner, and such approval will be made conditional upon representations as to suitability of the investment for each subscriber. The form of subscription agreement for Units, set forth as Exhibit B to the Prospectus, provides that each subscriber will represent, among other things, that he meets the general investor suitability standards established by the Partnership and set forth in the Prospectus under the heading "Who Should Invest." Such general investor suitability standards provide, among other things, that investment in the Partnership is suitable only for an investor (a "Qualified Investor") who meets the following requirements: (a) In the case of an investor that is a corporation, other than a corporation subject to Subchapter S of the Code, such corporation (a "C Corporation") has a net worth of not less than $75,000; (b) in the case of a noncorporate investor, such investor reasonably expects to have substantial unsheltered passive income or, if an individual, such investor reasonably expects to have adjusted gross income of *less* than $250,000 in the next twelve years and reasonably expects to have income tax liability during those years in respect of which the tax credits can be utilized and either (1) he has a net worth (exclusive of home, furnishings and automobiles) of at least $50,000 ($35,000, if such investor is a resident of New Hampshire) and an annual gross income of not less than $30,000 ($35,000, if such investor is a resident of New Hampshire) in the current year and estimates he will maintain these levels for the twelve succeeding years and that (without regard to investment in the Partnership) some part of his income for the current year and the twelve succeeding years will be subject to Federal income tax at the rate of 28% or more, or (2) irrespective of annual taxable income, he has a net worth (exclusive of home, furnishings and automobiles) of at least $75,000, or (3) is purchasing in a fiduciary capacity for a person or entity having such net worth and annual gross income as set forth in clause (1) or such net worth as set forth in clause (2); or (c) in the case of an investor that is a corporation subject to Subchapter S of the Code, each of its shareholders (or if a partnership each of its partners) holding a material interest therein meets the criteria applicable to noncorporate investors. Units will be sold in certain states only to persons who meet additional or alternative standards which will be set forth in the Prospectus, any supplement to the Prospectus, or the Subscription Agreement; *Provided, however,* That in no event shall the Partnership employ any such suitability standard which is less restrictive than that set forth above. The Partnership Agreement also imposes certain restrictions on transfer and assignment of the Units, including that each proposed assignee must deliver to the Managing General Partner evidence of his suitability. The Partnership will not redeem or repurchase Units, does not anticipate formation of a public market for the Units, and thus believes purchases of Units should be considered illiquid investments.

6. The Partnership will be controlled by its general partners, the Managing General Partner and Arch Street IV Limited Partnership (collectively, the "General Partners"). The Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Partnership. However, the majority in interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), dissolve the Partnership, and remove any General Partner and elect a replacement therefor. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Partnership at any and all reasonable times.

7. The Partnership Agreement provides that certain significant actions cannot be taken by the Managing General Partner without the express consent of a majority in interest of the Limited Partners. Such actions include: (a) Until the end of the 10-year period commencing on the date of the Prospectus, the sale in a 12-month period of Local Limited Partnership interests constitutinig more than 33% of the Partnership's then existing total investment in Local Limited Partnership interests; (b) the sale at any one time of all or substantially all of the assets of the Partnership, except for sales in connection with the liquidation and winding up of the Partnership's business upon its dissolution; (c) dissolution of the Partnership; and (d) causing the Partnership to merge or be consolidated with any other entity. The admission of a successor or additional General Partner would also require express consent under the Partnership Agreement.

8. Boston Financial Securities, Inc., an affiliate of the General Partners (the "Selling Agent"), will receive customary commissions and an underwriting advisory fee on the sale of the Units, together with an expense allowance to defray accountable due diligence activities. The Selling Agent may authorize other members ("Soliciting Dealers") of the National Association of Securities Dealers, Inc. ("NASD") to sell Units. The Selling Agent will pay a concession to each Soliciting Dealer on all sales of Units by such Soliciting Dealer and may reallow a substantial portion of its underwriting advisory fee to such Soliciting Dealer. Such selling commissions and fees are customarily charged in securities offerings of this type and are consistent with the guidelines of the NASD.

9. During the offering and organizational phase, the Managing General Partner and its Affiliates (as defined in the Partnership Agreement) will receive from the Partnership reimbursement of organizational, offering and selling expenses and an allowance for marketing expenses.

10. Acquisition phase fees payable to all persons, including the General Partners or their Affiliates, in connection with the acquisition of interests in Local Limited Partnerships, will be limited by the guidelines adopted by NASAA. During the operating phase, the Partnership may pay additional fees or compensation to the General Partners or their Affiliates including, without limitation, an asset management fee.

Such asset management fee is paid in consideration of the administration of the affairs of the Partnership in connection with each Local Limited Partnership in which the Partnership invests. Such other fees may be paid in consideration of property management services rendered by the General Partners or their Affiliates as the management and leasing agent for some of the Local Limited Partnerships and for consulting services rendered by the General Partners or their Affiliates as consultants to some of the Local Limited Partnerships. All such fees shall be subject to the terms of the Partnership Agreements. In addition, the General Partners or their Affiliates may receive amounts from Local Limited Partnerships to the extent permitted by applicable law and regulations. Such amounts shall be subject to the terms of the Partnership Agreement. Compensation to the General Partners or their Affiliates during the liquidating stage will be in the form of distributions of the proceeds of the sale or refinancing of Local Limited Partnership projects or interests, or of real or personal property of the Partnership. In addition to the foregoing fees and interests, the General Partners and their Affiliates will be allocated generally 1% of profits and losses of the Partnership for tax purposes.

11. The substantial fees and other forms of compensation that will be paid to the General Partners and their Affiliates will not have been negotiated through arm's length negotiations. Terms of all such compensation, however, will be fair and not less favorable to the Partnership than would be the case if such terms had been negotiated with independent third parties. In addition, compensation in various forms will be paid to the local general partner of each Local Limited Partnership.

12. All proceeds of the public offering of Units will initially be placed in an escrow account with Shawmut Bank, N.A. ("Escrow Agent"). Pending release of offering proceeds to the Partnership, the Escrow Agent will deposit escrowed funds in the "Shawmut Interest Bearing Account," a federally insured money market deposit account. The offering of Units will terminate not later than one year from the date upon which the Partnership's Registration Statement shall have been declared effective. If subscriptions for at least 5,000 Units have not been received by such termination date, no Units will be sold and funds paid by subscribers will be returned promptly, together with a pro rata share of any interest earned thereon. The Partnership will not admit any subscribers as Limited Partners to the Partnership until the exemptive order applied for herein is granted or the Partnership receives an opinion of counsel that it is exempt from registration under the 1940 Act. Upon receipt of the prescribed minimum number of subscriptions, funds in escrow will be released to the Partnership and held in trust pending investment in Local Limited Partnerships. Any net proceeds not immediately utilized to acquire Local Limited Partnership interests or for other Partnership purposes will be invested and held in highly liquid, non-speculative securities which provide adequately for the preservation of capital. It is the Partnership's intention to apply capital raised in its public offering to the acquisition of Local Limited Partnership interests as soon as possible.

13. The Partnership Agreement provides that, subject to certain limitations including negligence and misconduct, the Partnership shall indemnify the General Partners and certain Affiliates for losses sustained by them or their Affiliates in connection with the business of the Partnership. However, the Partnership has been advised that in the opinion of the SEC indemnification for liabilities under the Securities Act is contrary to public policy as expressed in the Securities Act and is therefore unenforceable.

Applicants' Legal Conclusions

1. The exemption of the Partnership from all provisions of the 1940 Act is both necessary and appropriate in the public interest, because: (a) Investment in low and moderate income housing in accordance with the national policy expressed in Title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form; (b) the limited partnership structure provides the only means of bringing private equity capital into such housing; (c) the limited partnership form insulates each Limited Partner from personal liability and limits his financial risk to the amount he has invested in the program, while also allowing the Limited Partner to claim on his individual tax return his proportionate share of the tax credits, income and losses from the investment; (d) the limited partnership form of organization is incompatible with fundamental provisions of the 1940 Act, such as the requirement of annual approval by investors of a management contract and the requirements concerning election of directors and the termination of the management contract; and (e) real estate limited partnerships such as the Partnership generally cannot comply with the asset coverage limitations imposed by section 18 of the 1940 Act. Also, an exemption from these basic provisions is necessary and appropriate so as not to discourage use of the two-tier limited partnership entity or frustrate the public policy established by the housing laws.

2. Interests in the Partnership will be sold only to, and transfers will be permitted only to, investors who meet specified suitability standards (as described above) which the Partnership believes are consistent with the requirements in Release No. 8456, with the guidelines of those states which prescribe suitability standards, and with the securities laws of all states where the Units will be sold. Such investors will receive extensive reports concerning the Partnership's business and operations. Although the interests of the General Partners and their Affiliates may conflict in various ways with the interests of Limited Partners, Limited Partners are adequately protected through disclosure of all potential conflicts in the Prospectus, including competition by Local Limited Partnerships with Affiliates for properties and the participation by an Affiliate as the Selling Agent for the offering. To address this conflict, the General Partners agree, in section 5.7 of the Partnership Agreement, that each General Partner and each Affiliate thereof, prior to entering into an investment which could be suitable for the Partnership or recommending such investment to others, must present to the Partnership the opportunity to enter into such investment and may not enter into such investment on its own behalf nor recommend it to others unless the Partnership has declined to enter into such investment. Further protection for the interests of Limited Partners is provided by the numerous provisions of the Partnership Agreement designed to prevent over-reaching by the General Partners and to assure fair dealing by the General Partners vis-a-vis the Limited Partners. The Partnership will also file with the SEC and distribute certain financial documents and reports on its activities.

3. In addition, all compensation to be paid to the General Partners and their Affiliates is specified in the Partnership Agreement and Prospectus and no compensation will be payable to the General Partners or any of their Affiliates not so specified.

4. Release No. 8456 lists two conditions, designed for the protection

of investors, which must be satisfied in order to qualify for the type of exemptive relief which the Partnership seeks: (1) "Interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable * * *"; and (2) "requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company." The Partnership will comply with these conditions and will otherwise operate in a manner designed to insure investor protecion.

5. The contemplated arrangement of the Partnership is not susceptible to abuses of the sort the 1940 Act was designed to remedy. The suitability standards described above, the requirements for fair dealing provided by the Partnership's governing instruments, and pertinent governmental regulations imposed on each Local Limited Partnership by various Federal, State and local agencies, provide protection to investors in Units comparable to and in some respects greater than that provided by the 1940 Act. An exemption would therefore be entirely consistent with the protection of investors and the purposes and policies of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-7188 Filed 3-24-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16882; 811-3107]

Lazard Cash Management Fund, Inc.; Application for Deregistration

March 20, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Lazard Cash Management Fund, Inc. ("Applicant").

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application on Form N-8F was filed on January 31, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on April 13, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One Rockefeller Plaza, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: Legal Technician Patricia Copeland (202) 272-3009, or Branch Chief Karen Skidmore, (202) 272-3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a Maryland corporation and an open-end diversified management investment company under the 1940 Act. On November 5, 1980, Applicant filed a Notification of Registration pursuant to section 8(a) of the 1940 Act on Form N-8A. On the same date, Applicant filed a registration statement under the Securities Act of 1933 on Form N-1A which was declared effective on January 9, 1981, and the initial public offering commenced shortly thereafter.

2. At a meeting on December 18, 1986, Applicant's Board of Directors ("Board") authorized the Plan of Merger ("Merger") of Applicant into Lazard Freres Funds, Inc. ("Lazard Freres Funds") (811-3495) (formerly Lazard Tax-Free Reserves, Inc.), a registered open-end management investment company. Under the Merger, Applicant would become a new separate series portfolio, with its same name, of Lazard Freres Funds. On April 21, 1987, the Applicant's shareholders approved the Merger by a 69.03% vote. In connection with such shareholder vote, the Applicant solicited proxies pursuant to a Proxy Statement dated February 27, 1987, which was filed with the SEC and mailed to shareholders.

3. The Board recommended the Merger because: (a) The Tax Reform Act of 1986 made it feasible for a single investment company to include portfolios that produce income subject to Federal income tax and portfolios that produce income exempt from Federal income tax; (b) combining Applicant and two other money market funds managed by Lazard Freres & Co. into a single corporate structure was expected to result in lower costs to the Fund for printing, legal and auditing expenses which were expected to more than offset the moderate costs of the Merger in a relatively short time; and (c) the Mergers would result in considerable administrative convenience for investors and for the investment manager and distributor.

4. As of April 30, 1987, the Applicant had outstanding 738,487,799 shares of common stock, with a net asset value of $1.00 per share. Each full and fractional share of each series of common stock of the Applicant then issued and outstanding was converted on May 1, 1987, into an equal number of full and fractional shares of common stock of a newly created series of Lazard Freres Funds. On May 1, 1987, all assets of Applicant were merged into Lazard Freres Funds. No brokerage commissions were paid.

5. Lazard Freres & Co., investment adviser to both, agreed to bear all expenses over an expense limitation for Applicant and Lazard Freres Funds. Approximately $21,600 of expenses were allocated to Applicant and approximatley $6,300 of additional expenses were allocated to Lazard Freres Funds, Inc.

6. On May 1, 1987, Applicant filed Articles of Merger with the State of Maryland, which became effective on that date. Thereafter, Applicant no longer had any separate legal existence under Maryland state law. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-7189 Filed 3-24-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16883; 811-4554]

Lazard Freres Institutional Tax-Exempt Fund, Inc.; Application for Deregistration

March 20, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Lazard Freres Institutional Tax-Exempt Fund, Inc. ("Applicant").

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application on Form N-SF was filed on January 31, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on April 13, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS. Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One Rockefeller Plaza, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: Legal Technician Patricia Copeland (202) 272-3009, or Branch Chief Karen Skidmore, (202) 272-3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a Maryland corporation and an open-end diversified management investment company under the 1940 Act with two portfolios. On January 10, 1986, Applicant filed a Notification of Registration pursuant to section 8(a) of the 1940 Act on Form N-8A. On the same date, Applicant filed a registration statement under the Securities Act of 1933 on Form N-1A which was declared effective on April 16, 1986, and the initial public offering commenced shortly thereafter.

2. At a meeting on December 18, 1986, Applicant's Board of Directors ("Board") authorized the Plan of Merger ("Merger") of Applicant into Lazard Freres Institutional Fund, Inc. (811-4555) ("Lazard Freres Institutional Fund") a registered open-end management investment company. Under the Merger, the Tax-Free Portfolio and the Municipal Bond Portfolio of the Applicant would become new separate series portfolios, with their same names, of Lazard Freres Institutional Fund. On April 21, 1987, the Applicant's shareholders approved the Merger by a 67.16% vote. In connection with such shareholder vote, the Applicant solicited proxies pursuant to a Proxy Statement dated February 27, 1987, which was filed with the SEC and mailed to shareholders.

3. The Board recommended the Merger because: (a) The Tax Reform Act of 1986 made it feasible for a single investment company to include portfolios that produce income subject to Federal income tax and portfolios that produce income exempt from Federal income tax; (b) combining Applicant and Lazard Freres Institutional Fund into a single corporate structure was expected to result in lower costs to the Fund for printing, legal and auditing expenses which were expected to more than offset the moderate costs of the Merger in a relatively short time; and (c) the Merger would result in considerable administrative convenience for investors and for the investment manager and distributor.

4. As of April 30, 1987, the Applicant had outstanding 87,382,181 shares of the Tax-Free Portfolio series of common stock, with a net asset value of $1.00 per share, and 100 shares of the Municipal Bond Portfolio series of common stock outstanding, with a net asset value of $10.00 per share. Each full and fractional share of each series of common stock of the Applicant then issued and outstanding was converted on May 1, 1987, into an equal number of full and fractional shares of common stock of a newly created series of Lazard Freres Institutional Fund Inc. On May 1, 1987, all assets of Applicant were merged into Lazard Freres Institutional Fund. No brokerage commissions were paid.

5. Lazard Freres & Co., investment adviser to both, agreed to bear all expenses over an expense limitation for Applicant and Lazard Freres Institutional Fund. Approximately $6,900 of expenses were allocated to Applicant and approximately $14,000 of additional expenses were allocated to Lazard Freres Institutional Fund and $5,600 of expenses were allocated to Lazard Freres & Co.

6. On May 1, 1987, Applicant filed Articles of Merger with the State of Maryland, which become effective on that date. Thereafter, Applicant no longer had any separate legal existence under Maryland state law. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-7190 Filed 3-24-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16884; 811-3247]

Lazard Government Fund, Inc.; Application for Deregistration

March 20, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Lazard Government Fund, Inc., ("Applicant").

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application on Form N-8F was filed on January 31, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on April 13, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant,

One Rockefeller Plaza, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: Legal Technician Patricia Copeland (202) 272–3009, or Branch Chief Karen Skidmore, (202) 272–3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant's is a Maryland corporation and an open-end diversified management investment company under the 1940 Act. On August 20, 1981, Applicant filed a Notification of Registration pursuant to section 8(a) of the 1940 Act on Form N–8A. On the same date, Applicant filed a registration statement under the Securities Act of 1933 on Form N–1A which was declared effective on October 28, 1981, and the initial public offering commenced shortly thereafter.

2. At a meeting on December 18, 1986, Applicant's Board of Directors ("Board") authorized the Plan of Merger ("Merger") of Applicant into Lazard Freres Funds, Inc. ("Lazard Freres Funds") (811–3495) (formerly Lazard Tax-Fee Reserves, Inc.), a registered open-end management investment company. Under the Merger, Applicant would become a separate series portfolio of Lazard Freres Funds. On April 21, 1987, the Applicant's shareholders approved the Merger by a 54.66% vote. In connection with such shareholder vote, the Applicant solicited proxies pursuant to a Proxy Statement dated February 27, 1987, which was filed with the SEC and mailed to shareholders.

3. The Board recommended the Merger because: (a) The Tax Reform Act of 1986 made it feasible for a single investment company to include portfolios that produce income subject to Federal income tax and portfolios that produce income exempt from Federal income tax; (b) combining Applicant and two other money market funds managed by Lazard Freres & Co. into a single corporate structure was expected to result in lower costs to the Fund for printing, legal and auditing expenses which were expected to more than offset the moderate costs of the Merger in a relatively short time; and (c) the Mergers would result in considerable administrative convenience for investors and for the investment manager and distributor.

4. As of April 30, 1987, the Applicant had outstanding 658,734,483 shares of common stock, with a net asset value of $1.00 per share. Each full and fractional share of each series of common stock of the Applicant then issued and outstanding was converted on May 1, 1987, into an equal number of full and fractional shares of common stock of a newly created series of Lazard Freres Funds. On May 1, 1987, all assets of Applicant were merged into Lazard Freres Funds. No brokerage commissions were paid.

5. Lazard Freres & Co., investment adviser to both, agreed to bear all expenses over an expense limitation for Applicant and Lazard Freres Funds. Approximately $19,700 of expenses were allocated to Applicant and approximately $5,800 of additional expenses were allocated to Lazard Freres Funds.

6. On May 1, 1987, Applicant filed Articles of Merger with the state of Maryland, which became effective on that date. Thereafter, Applicant no longer had any separate legal existence under Maryland state law. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–7191 Filed 3–24–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel No. IC–16881; 812–7077]

Merrill Lynch KECALP L.P. 1984, et al.; Application

March 20, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Merrill Lynch KECALP L.P. 1984 ("1984 Partnership"), Merrill Lynch KECALP L.P. 1986 ("1986 Partnership") (together, "Partnerships") and Merrill Lynch Interfunding Inc. ("MLIF").

Relevant 1940 Act Sections: Exemption requested under section 17(b) from the provisions of section 17(a).

Summary of Application: Applicants seek an order relating to the acquisition of certain securities in PACE from an "affiliated person," as defined in the 1940 Act.

Filing Date: The application was filed on July 20, 1988, and amended on January 17, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on April 13, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549. Applicants, 1984 Partnership, 1986 Partnership and MLIF, World Financial Center, North Tower, New York, New York 10281.

FOR FURTHER INFORAMTION CONTACT: Staff Attorney Cathey Baker (202) 272–3033 or Branch Chief Karen L. Skidmore (202) 272–3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 252–4300).

Applicants' Representations

1. Partnerships, limited partnerships organized under the laws of Delaware, are non-diversified, closed-end management investment companies registered under the 1940 Act. The investment objective of each Partnership to seek long-term capital appreciation. Each Partnership is an "employees' securities company" within the meaning of section 2(a)(13) of the 1940 Act, and operates in accordance with the terms of an exemptive order issued pursuant to section 6(b) of the 1940 Act (Investment Company Act Release No. 12363; April 8, 1982) ("KECALP Exemption Order"). The general partner for each Partnership is KECALP, Inc. ("KECALP"), a Delaware corporation and wholly-owned indirect subsidiary of Merrill Lynch & Co. ("ML & Co."). KECALP is responsible for managing and making investment decisions for the Partnerships. MLIF, a Delaware corporation engaged in commercial

financing transactions, is an indirect subisidary of ML & Co.

2. PACE, a Delaware corporation organized in 1984, was a holding company with assets and businesses consisting solely of Rheem Manufacturing Company, Inc. ("Rheem"), Hayes International Corporation ("Hayes"), Uarco Incorporated ("UARCO"), World Color Press, Inc. and certain of their subsidiaries acquired from City Investing Company on December 13, 1984 ("Acquisition"). PACE financed the Acquisition through (i) the issuance and sale of common stock, at a price of $5 per share, to several institutional investors, including MLIF, (ii) the issuance and sale of a junior subordinated note and debentures, and (iii) bank borrowings. In January 1985, PACE raised additional capital through the issuance and sale of preferred stock and certain senior notes and senior and junior subordinated notes and debentures. Shortly thereafter, PACE engaged in an additional offering of common stock, at a price of $5 per share, through a private placement.

3. On November 3, 1986, MLIF agreed to sell to the 1984 Partnership and the 1986 Partnership 30,000 and 170,000 shares, respectively, of the PACE common stock owned by MLIF. The amount of shares represented less than 0.05% and 0.29%, respectively, of the PACE common stock outstanding on a fully-diluted basis.

4. In mid-1987, the Board of Directors of PACE decided to divest PACE of its Rheem subsidiary. The sale would be effected by the sale of PACE itself after the removal of PACE's other subsidiaries. Such a removal was accomplished by a partial redemption of shareholders' interest in PACE in exchange for PACE's other subsidiaries. To facilitate these transactions, PACE's non-Rheem subsidiaries were contributed to Printing Holdings, L.P. ("Printing"), a newly formed limited partnership, prior to their distribution to PACE shareholders. On September 29, 1987, Class 1 Units of limited partnershp interest ("Units") in Printing were distributed to PACE's shareholders in the form of a redemptive distribution on a pro rata basis for approximately 60.4% of PACE's outstanding common stock. The percentage of PACE's common stock to be redeemed in exchange for Units was determined by an independent appraisal of the fair market value of PACE's constituent businesses.

5. After the distribution of the Units, PACE negotiated an agreement to sell PACE to Paloma Industries, Ltd., a closely held Japanese company ("Paloma"). The sale to Paloma was consummated on April 7, 1988 for a price in cash of approximately $14.16 per remaining share of PACE common stock (as compared to an original cost basis of $5 per share). As a result of the post-closing audit of the PACE balance sheet with respect to working capital, Paloma made an additional cash payment to PACE shareholders on May 16, 1988. The payment amounted to approximately $0.82 per share of PACE common stock.

6. In connection with these transactions, MLIF has allocated distributions of Units and cash proceeds from the sale of PACE common stock to the Partnerships on a pro rata basis. As a result of the transactions, the shares of PACE common stock that MLIF initially agreed to sell to the 1984 Partnership and the 1986 Partnership were represented by 11,881 shares of PACE common stock and 18,119 Units in Printing and 67,325 shares of PACE common stock and 102,675 Units in Printing, respectively. Following the sale of PACE common stock on April 7, 1988 and the related additional cash payment on May 16, 1988, MLIF held approximately $177,948 and $1,008,361 for the 1984 Partnership and the 1986 Partnership, respectively.

7. On October 12, 1988, Printing sold Hayes and UARCO to Precision Standard Inc. and SETTSU Corp. of Japan, respectively, for a price in cash aggregating approximately $10.98 per Unit of Printing. The proceeds of this sale were distributed to the partners of Printing on a pro rata basis. As a result of this transaction, together with the transaction with Paloma described previously, the shares of PACE common stock that MLIF initially agreed to sell to the 1984 Partnership and the 1986 Partnership are represented by approximately $376,817 and 18,119 Units in Printing and $2,135,291 and 102,675 Units in Printing, respectively.

8. The purchase price to be paid by the Partnerships to MLIF for the proceeds from sale of the shares of common stock of PACE and the Units proposed to be acquired by the Partnerships will be the lower of (i) the fair value of the cash proceeds and Units on the date they are acquired by the Partnerships (as determined in good faith by the Board of Directors of KECALP) or (ii) the cost to MLIF of purchasing and holding the investment. With respect to clause (ii), such cost shall be the original purchase price of $5 per share paid for the shares of PACE common stock, plus carrying costs relating to the investment. Carrying costs will consist of interest charges computed at the lower of (i) the prime commercial lending rate charged by Citibank, N.A. during the period from December 13, 1984, the date MLIF acquired the investment, until the date the Partnerships acquire the investment, or (ii) the effective cost of borrowings by ML & Co., as defined below, during such period. The effective cost of borrowings by ML & Co. is its actual "Average Cost of Funds," which it calculates on a monthly basis by dividing its consolidated financing expenses by the total amount of its borrowings during this period. As of September 30, 1988, the carrying costs payable to MLIF by the 1984 Partnership and the 1986 Partnership aggregated approximately $48,000 and $277,000, respectively.

Applicants' Legal Conclusions

9. As a result of affiliations, sales of securities on a principal basis by KECALP and MLIF to the Partnerships are prohibited by section 17 and cannot be effected unless exemptive relief is obtained under section 17(d). The Applicants submit that the statutory standards with respect to the relief requested under section 17(b) are satisfied: Relief is justified both by the terms of the transactions and the fact that the proposed investments are not otherwise available to the Partnerships. With respect to the terms of the transactions, the KECALP Board of Directors has reviewed the proposed investments in detail. The members of the KECALP Board are sophisticated and experienced in valuing securities and in evaluating financial transactions generally. The KECALP Board considered all information deemed relevent to the proposed investments, including the nature of the investments, the nature of the investments by affiliates of ML & Co., and the fairness of the purchase prices to be paid by the Partnerships. The KECALP Board determined that the proposed investments by the Partnerships will not directly or indirectly benefit entities affiliated with ML & Co. or its subsidiaries which also acquired investments in PACE. Moreover, the KECALP Board approved the Partnerships' investments in PACE after consideration of each of the factors set forth in section 17(b) of the 1940 Act.

10. In evaluating the terms of the transactions, the KECALP Board considered the fact that the proposed purchase prices to be paid by the Partnerships will include carrying costs incurred by an affiliated person, *i.e.*, MLIF, if the fair value of the investment at the time of acquisition by the Partnerships is more than the sum of the purchase price plus the affiliate's carrying costs. In approving purchase

prices which may include carrying costs, the KECALP Board recognized that KECALP receives no compensation for serving as general partner of the Partnerships and that ML & Co. has incurred considerable expenses in organizing the Partnerships. The Partnerships believe that it is appropriate to reimburse MLIF for its carrying costs in order to induce MLIF to make investments available to the Partnerships in the future. The Partnerships would have purchased the PACE investment directly, had it not been deemed necessary to obtain the relief requested herein. In light of these factors, the KECALP Board believes it is wholly appropriate for the purchase price paid for portfolio investments to reflect carrying costs, provided that the fair value of each investment at the time of acquisition exceeds the amount of the purchase price, plus carrying costs. The Applicants submit that to deny reimbursement for carrying costs would result in a further and unwarranted loss to MLIF and would provide a disincentive for it to act on behalf of the Partnerships in the future.

11. The Applicants note that the Partnerships propose to reimburse MLIF for its carrying costs from December 13, 1984, the date that MLIF acquired the original investment in PACE, rather than from November 3, 1986, the date on which the KECALP Board approved the investments for the Partnerships. The Applicants recognize that, for purposes of calculating the reimbursement of an affiliated person's carrying costs, a Partnership generally bears such costs from the later of the date the KECALP Board approved the Partnership's purchase of an investment or the date the investment was acquired by the affiliated person. The Partnerships believe that in this instance, however, it is appropriate to compensate MLIF for its carrying costs for a longer period. As noted above, the KECALP Board of Directors is experienced in valuing securities and evaluating financial transactions. In making its determination that the Partnerships should acquire the investments, the KECALP Board considered, among other things, several analyses by investment bankers, including a letter furnished by PACE that estimated the fair market value of shares of PACE common stock based upon analyses of investment bankers. On the basis of such information, the KECALP Board determined that the market value of shares of PACE common stock was significantly in excess of the proposed purchase price, including carrying costs. The Applicants believe that the subsequent events involving PACE support the KECALP Board's determination to the extent that the proposed investments have already produced proceeds greater than the proposed purchase prices of the investments. The investments by the 1984 Partnership and the 1986 Partnership will cost $150,000 and $850,000, respectively, plus carrying costs in the aggregate amounts of approximately $48,000 and $277,000, respectively. In return, the 1984 Partnership will receive $376,817 and 18,119 Units of Printing, and the 1986 Partnership will receive $2,135,219 and 102,675 Units of Printing. Based upon estimates provided by a group within Merrill Lynch that works in the area of leveraged buyouts, the KECALP Board understands that the value of the remaining companies owned by Printing is approximately $1.5 million, or $12.42 per Unit. It therefore appears that the return on each Partnership's investment will substantially exceed the purchase price of the investment. In view of these considerations, the Partnerships believe that their reimbursement of MLIF's carrying costs during the period from December 13, 1984 will serve as an inducement to MLIF to make investments available to the Partnerships, particularly investments such as the one in PACE, which MLIF believed to be extremely profitable at the time it was offered to the Partnerships.

12. The Applicants further submit that the investments are not otherwise available for purchase by the Partnerships. The KECALP Board has approved such investments after review of a considerable number of possible investments for the Partnerships. The Partnerships state that their respective investment programs will be prejudiced if they are not permitted to make the investments proposed in this Application.

13. The Board of Directors of KECALP believes that the proposed investments are consistent with the rationale underlying the establishment of each of the Partnerships as an "employees' securities company." It was indicated in the application for exemptive relief granted in the KECALP Exemptive Order, as well as in the prospectuses of the Partnerships, that ML & Co. and its affiliates would be involved in structuring, identifying and investing in many of the Partnerships' portfolio investments. The Partnerships state that the relief requested is thus consistent with their purposes and stated policies.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. The investments in PACE will be acquired by the Partnerships in the manner and on the terms described above.

2. In connection with the deliberations and determinations by the KECALP Board of Directors regarding the Partnerships' proposed investments in PACE, appropriate record-keeping will be maintained and made available for inspection by the Commission and by the limited partners of the Partnerships in accordance with the KECALP Exemptive Order and the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-7192 Filed 3-24-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16879; 812-6464]

Merrill Lynch KECALP L.P. 1986, et al.; Application

March 20, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Merrill Lynch KECALP L.P. 1986 (the "Partnership"), Merrill Lynch & Co., Inc. ("ML&Co."), and Merrill Lynch Interfunding Inc. ("MLIF").

Relevant 1940 Act Sections: Exemption requested under section 17(b) from the provisions of section 17(a) and authorization requested under section 17(d) and Rule 17d-1 thereunder.

Summary of Application: Applicants seek an order: (i) Granting an exemption under section 17(b) from the provisions of section 17(a) to permit the Partnership to acquire certain securities from MLIF and ML&Co., each of which is an affiliated person of the Partnership; and (ii) authorizing, under section 17(d) and Rule 17d-1 thereunder, the acquisition of some of the foregoing securities in a joint transaction with ML&Co.

Filing Dates: The application was filed on August 25, 1986, and was amended and restated on May 22, 1987, December 19, 1988, and February 27, 1989. A supplementary letter from Applicants' counsel was submitted on March 20, 1989.

Hearing or Notification of Hearing: An order granting the application will be

issued unless the Commission orders a hearing. Interested persons may request a hearing on the application, or ask to be notified if a hearing is ordered. Any request should be in writing and should be received by the SEC by 5:30 p.m., on April 13, 1989. A request for a hearing should state the nature of the requestor's interest, the reason for the request, and the issues contested. Any person requesting a hearing should serve the Applicants with a copy of the request, either personally or by mail. Such persons should also send the request to the Secretary of the SEC, along with proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. A request for notification of the date of a hearing may be made by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. The Partnership, ML&Co. and MLIF, North Tower, World Financial Center, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272–2847, or Karen L. Skidmore, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. Any person may obtain a copy of the complete application for a fee, either by going to the SEC's Public Reference Branch, or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The Partnership, a Delaware limited partnership, is a non-diversified, closed-end management investment company. The investment objective of the Partnership is to seek long-term capital appreciation. The Partnership is an employees' securities company, and operates under the terms of an exemptive order issued under section 6(b) of the 1940 Act (Investment Company Act Release No. 12363 (April 8, 1982)) (the "KECALP Exemptive Order"). Units in the Partnership were offered exclusively to employees of ML&Co. and its subsidiaries, and to non-employee directors of ML&Co. Employees of ML&Co. and its subsidiaries could purchase Units in the Partnership only if their annualized compensation for 1985 was at least $75,000.

2. The general partnership is KECALP Inc. ("KECALP"), a Delaware corporation and a wholly-owned subsidiary of ML&Co. KECALP is responsible for managing and making investment decisions for the Partnership.

3. ML&Co. is a holding company organized as a Delaware corporation, which, through its subsidiaries, provides investment, financing, real estate, insurance and related services. ML&Co.'s principal subsidiary, Merrill Lynch, Pierce, Fenner & Smith Inc. ("MLPF&S"), is a securities firm and was the selling agent for the Units issued by the Partnership. MLIF, a Delaware corporation, is an indirect subsidiary of ML&Co. that is engaged in commercial financing transactions.

4. Jack Eckerd Corporation ("JEC"), a Florida corporation, is a specialty retailer. During 1985, Merrill Lynch Capital Markets, an unincorporated group within MLPF&S that conducts the investment banking and underwriting activities of MLPF&S, structured a leveraged buyout of JEC. As a result, JEC's equity securities are owned by a Delaware corporation organized solely to effect the leveraged buyout ("Holdings"). Holdings' equity securities are owned by members of JEC's management, MLIF and several institutional investors, including certain entities affiliated with ML&Co. or its subsidiaries. Following full implementation of the buyout, JEC is to be merged with and into Holdings. MLIF has agreed to sell to the Partnership 132,978 of its shares of Class A common stock of Holdings, which represent 0.4% of the outstanding Class A shares on a fully diluted basis. MLIF paid $3.76 per share of Holdings on April 30, 1986. No dividends have been declared on the Class A common stock of Holdings, which shares are not traded on a Securities Exchange or on NASDAQ.

5. Enhance is a newly organized company which, through its wholly-owned subsidiary, Enhance Reinsurance Company, provides reinsurance to primary insurers of municipal and, to a lesser extent, corporate debt securities. During 1986, Enhance engaged in an offering of common stock by means of a private placement which closed on October 31, 1986. As a result of the offering, Enhance common stock is owned by members of Enhance's management, ML&Co. and several institutional and individual investors. ML&Co. acquired approximately 22% of the offering at a purchase price of $1,000 per share. ML&Co. has agreed to sell to the Partnership 400 of its shares of Enhance common stock, which represent less than 0.4% of the Enhance common stock outstanding on a fully diluted basis. No dividends have been declared on the Enhance common stock, which is not traded on a Securities Exchange or on NASDAQ.

6. Varity (formerly Massey-Ferguson Limited) is a holding company which through subsidiaries, manufacturers, markets and finances the purchase of farm machinery, industrial machinery, and diesel engines. On May 9, 1986, for an aggregate price of $22 million, MLIF acquired certain notes issued by subsidiaries of Varity and certain equity-related securities of Varity previously held by one of Varity's lenders. The securities obtained by MLIF include: senior secured guaranteed notes issued by five of Varity's North American subsidiaries and guaranteed by Varity; Massey Combines Corporation ("MCC") senior notes and MCC junior notes; Class I Series A senior convertible preferred stock; and Varity common stock. Neither ML&Co. nor any of its subsidiaries is affiliated with any of Varity's other lenders. MLIF has agreed to sell to the Partnership a package of the foregoing securities representing an aggregate of $720,000 of the original purchase price, including $1,035,100 of the senior secured guaranteed notes, $528,000 shares of Varity common stock, $51,000 of the MCC senior notes, 23,425 shares of Class I Series A senior convertible preferred stock, and 24,880 shares of Varity common stock, which represent 1.0%, 0.03%, 0.2% and 0.02% of the total amounts of the securities of the stated type outstanding, respectively, on a fully diluted basis. Subsequently, with the consent of the Partnership, MLIF sold the shares of Class I Series A senior covertible preferred stock and common stock, together with and on the same basis as its own holdings of such stocks. The proceeds of such sale, together with periodic interest (calculated in the same manner as the carrying costs described in paragraph 8, below), principal and dividend payments with respect to the remaining securities proposed to be acquired by the Partnership and aggregated approximately $1,280,562 as of October 31, 1988. The remaining securities proposed to be acquired by the Partnership are not traded on a securities exchange or on NASDAQ.

7. The price for each of the foregoing investments will be the lower of (i) the fair value of the applicable investment on the date it is acquired by the Partnership (as determined in good faith by the Board of Directors of KECALP) or (ii) the cost to ML&Co. or MLIF, as applicable, of purchasing and holding applicable investment. For the purpose of clause (ii), cost shall be the original purchase price paid for the applicable investment, plus carrying costs relating to such investment as determined below.

8. Carrying costs shall consist of interest charges from the later of (i) the date the proposed investment was acquired by MLIF or LM&Co., as applicable, or (ii) the date KECALP approved the Partnerships' purchsase of the applicable investment, until the date the Partnership acquires the investment. Interest charges shall be computed at the lower of (i) the prime commercial lending rate charged by Citibank, N.A. during the applicable period or (ii) the effective cost of borrowings by ML&Co. during such period. The effective cost of borrowings by ML&Co. is its actual "Average Cost of Funds," which it calculates on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowings during this period.

9. With respect to the exemptions from section 17(a) of the 1940 Act and the approval sought under section 17(d) of the 1940 Act, the Directors of KECALP will maintain the records required by section 57(f)(3) of the 1940 Act and will comply with the provisions of section 57(h) of the 1949 Act. All minutes of meetings of the KECALP Board of Directors, including all procedures adopted by KECALP in connection with its evaluation of investments, will be available for inspection by the limited partners.

Applicants' Request for Relief

1. Applicants request an order under section 17(b) of the 1940 Act which would conditionally exempt them from section 17(a) of the 1940 Act to (i) permit the sale by MLIF of 132,978 shares of common stock of Holdings to the Partnership on the terms set forth in the application; (ii) permit the sale by ML&Co. of 400 shares of common stock of Enhance to the Partnership on the terms set forth in the application; and (iii) permit the sale by MLIF of a package of notes and proceeds from equity securities of Varity to the Partnership on the terms set forth in the application.

2. ML&Co. and the Partnership additionally request that the order authorize the sale by ML&Co. of 400 shares of common stock of Enhance to the Partnership under section 17(d) of the 1940 Act and Rule 17d–1 thereunder.

Applicants' Legal Analysis

A. Relief Under Section 17(b)

1. The relief under section 17(b) of the 1940 Act is justified by both the terms of the transactions and the fact that the proposed investments are not otherwise available to the Partnership. The members of the KECALP Board are sophisticated and experienced in valuing securities and evaluating financial transactions generally, and have reviewed the proposed investments in detail. In this regard, the KECALP Board considered all information deemed relevant, including the nature of the investments, and nature of the investments by ML&Co., and affiliates of ML&Co., and the fairness of the purchase prices proposed to be paid by the Partnership. The KECALP Board determined that the proposed investments by the Partnership will not directly or indirectly benefit the entities affiliated with ML&Co., or the subsidiaries of ML&Co. which also acquired interests in the proposed investments. At meetings of the KECALP Board held on April 24, 1986, May 12, 1986 and June 3, 1986, the Partnerships investments in Holdings, Enhance and Varity, respectively, were approved after consideration of each of the factors set forth in section 17(b) of the 1940 Act.

2. The KECALP Board considered the fact that the proposed purchase prices to be paid by the Partnership will include carrying costs incurred by affiliated persons (i.e., ML&Co. and MLIF) if the fair value of each investment at the time of acquisition by the Partnership is more than the sum of the original purchase price plus the affiliated person's carrying costs. The Partnership believes that it is appropriate for it to reimburse affiliated persons for carrying costs when the affiliated persons purchased investments as, in effect, nominees for the Partnership and the Partnership would have purchased such investments directly if it had not been necessary to obtain the relief requested in the application.

3. The above-described investments are not otherwise available for purchase by the Partnership. The KECALP Board approved such investments after review of a considerable number of possible investments for the Partnership. The Partnership thus submits that its investment program will be prejudiced if it is not permitted to make the investments referred to in the application.

4. The KECALP Board believes that the proposed investments are consistent with the rationale underlying the establishment of the Partnership as an "employees' securities company." Both the application which led to the KECALP Exemptive order and the Partnership's prospectus indicated that ML&Co. and its affiliated persons would be involved in structuring, identifying and investing in many of the Partnership's portfolio investments. The Partnership thus submits that the relief requested in the application is consistent with the Partnership's purposes and stated policies.

B. Relief Under Section 17(d) and Rule 17d–1

1. The Partnership's proposed investments in Holdings and Varity were structured prior to the time the KECALP Board approved such investments. However, it was determined prior to completion of the private placement of Enhance common stock that it would be desirable for the Partnership to invest in such stock. Accordingly, the application requests relief under section 17(d) of the 1940 Act and Rule 17d–1 thereunder only with respect to the investment in Enhance common stock.

2. ML&Co. is one of several investors in Enhance common stock, each of which paid $1,000 per share for such stock. The KECALP Board reviewed the proposed investment in Enhance and determined that the investment was consistent with the Partnership's investment objective and that co-investment with ML&Co. would not disadvantage the Partnership in making, maintaining or disposing of its investments. In reaching such determinations, the KECALP Board recognized that although the purchase price per share would be the same, ML&Co. and the Partnership would each acquire a different number of shares. It was recognized that ML&Co. has a larger asset base than the Partnership, and at the dates the investments were approved, the Partnership's asset availability dictated a smaller investment than that made by ML&Co. ML&Co. and the Partnership believe that the purchase of different amounts of shares does not make the investment any less advantageous to either party. To the extent that the investment proves to be successful, ML&Co. and the Partnership will profit equally in proportion to their respective investments.

3. Both the application which led to the KECALP Exemptive Order and the Partnership's prospectus indicated that affiliates of ML&Co. would be involved in identifying and investing in many of the Partnership's portfolio investments. The Partnership thus submits that the relief requested is consistent with the purposes of the Partnership, its stated policies and the disclosure made to prospective investors.

4. The Partnership's purchase of Enhance common stock will not be consummated unless the KECALP Board determines, following the issuance of the relief requested, that the investment

in such stock continues to be appropriate for the Partnership.

Applicants' Condition

1. Applicants agree, as a condition to the requested order, that each of the investments in Holdings, Enhance and Varity will be acquired by the Partnership in the manner and on the terms described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-7193 Filed 3-24-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Small Business Investment Company Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302(a) and (b) limit maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public. Notice of this rate will be published upon change in the Debenture Rate.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 10.05 percent per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as further amended by section 1 of Pub. L. 99-226, December 28, 1985 (99 Stat. 1744), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies.

Dated: March 21, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-7196 Filed 3-24-89; 8:45 am]

BILLING CODE 8025-01-M

Omega Capital Corp.; Application for Conflict of Interest Transaction

[License No. 06/06-0260]

Notice is hereby given that Omega Capital Corporation (Omega), 755 S. 11th Street, Suite 250, Beaumont, Texas 77704, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b)(1) of the Regulations governing small business investment companies (13 CFR 107.903(b)(1) (1988)) for an exemption from the provisions of the cited regulation.

Omega proposes to invest $100,000 in Don McGregor dba Don McGregor Hospitality Group, 1127 First Interstate Bank Tower, 6161 Savoy Drive, Houston, Texas 77036.

The proposed Financing is brought within the purview of § 107.903(b)(1) of the Regulations because Mr. McGregor is an officer, director, and 15 percent shareholder of Omega.

Notice is hereby given that any person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Beaumont, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 20, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-7197 Filed 3-24-89; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES REPRESENTATIVE

GATT; Request for Comments Concerning Framework Agreement on Services

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments on sector coverage of proposed GATT framework agreement on trade in services.

SUMMARY: Section 132 of the Trade Act of 1974, as amended, requires the President, before entering into a trade agreement, to seek advice from certain executive branch agencies and from such other sources as he considers necessary. Discussions underway in the current GATT round of trade negotiations are expected shortly to include consideration of sectors that would be covered by a framework agreement on services. Interested persons are invited to submit their comments on services sectors that should be included in, or excluded from, the coverage of such a framework agreement.

FOR FURTHER INFORMATION CONTACT: Richard B. Self, Deputy Assistant U.S. Trade Representative for Services, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506 (202) 395-3606.

SUPPLEMENTARY INFORMATION: Negotiations are currently underway in Geneva under the auspices of the General Agreement on Tariffs and Trade (GATT) of a multilateral agreement on rules governing trade in services. Negotiations are scheduled to be concluded at the end of 1990. An intergovernmental negotiating group on services has begun discussions on a "framework agreement" that would establish general principles and rules applicable to international service transactions. Negotiations on sector coverage of the framework agreement are scheduled to begin in May 1989.

According to the Declaration of Punta del Este (which initiated the negotiations in September 1986): "Negotiations in this area shall aim to establish a multilateral framework of principles and rules for trade in services, including elaboration of possible disciplines for individual sectors, with a view to expansion of such trade under conditions of transparency and progressive liberalization and a means of promoting economic growth of all trading partners and the development of developing countries. Such framework shall respect the policy objectives of national laws and regulations applying to services and shall take into account the work of relevant international organizations."

Any interested person wishing to express a view with respect to the service sectors to be covered by the framework agreement, or to be excluded from the agreement, should file a comment by April 30, 1989. Comments must be in English and provided in twenty copies to: Mr. Richard B. Self, at the above address.

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

[FR Doc. 89-7148 Filed 3-24-89; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 17, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the same period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 46176
Date Filed: March 13, 1989
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 10, 1989
Description: Joint Application of Eastern Airlines, Inc., Continental Airlines, Inc., USAir, Inc. and Piedmont Aviation, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, request that the Department of Transportation approve, (a) the amendment of two route certificates of Eastern and Continental so as to remove their Philadelphia-Toronto/Montreal nonstop authority and (b) the transfer of such nonstop transborder authority to a new certificate in the name "USAir, Inc. or Piedmont Aviation, Inc."

Docket No. 46178
Date Filed: March 14, 1989
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: April 11, 1989
Description: Application of American Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing nonstop service between San Jose, California, and Tokyo, Japan.

Docket No. 46186
Date Filed: March 16, 1989
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: April 13, 1989
Description: Application of Delta Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity to permit Delta to provide nonstop air transportation between Atlanta, Georgia, on the one hand, and the coterminals of Rome and Milan, Italy, on the other hand.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 89-7228 Filed 3-24-89; 8:45 am]
BILLING CODE 4910-62-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 57
Monday, March 27, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

March 23, 1989.

FCC To Hold Open Commission Meeting, Thursday, March 30, 1989

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, March 30, 1989, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: Revision of Part 15 of the Rules regarding the operation of radio frequency devices without an individual license. Summary: The Commission will consider the technical and administrative requirements for the marketing and operation of non-licensed radio frequency devices.

General—2—Title: Inquiry into the Need for a Universal Encryption Standard for Satellite Cable Programming. Summary: The Commission will consider whether to adopt a *Notice of Inquiry* on this issue.

Common Carrier—1—Title: Notice of Proposed Rulemaking, In the Matter of Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture. Summary: The FCC will consider whether to adopt a Notice of Proposed Rulemaking regarding: (1) Methodologies for the tariffing of Open Network Architecture (ONA) elements in the federal access tariffs; (2) treatment of enhanced service providers in the federal access charge rules; and (3) elimination of certain specific ONA pricing requirements.

Common Carrier—2—Title: Report and Order, Provision of Access for 800 Service (CC Docket No. 86-10). Summary: The Commission will consider further action in this proceeding.

Mass Media—1—Title: Amendment of Part 73 of the Rules to provide for an additional FM station class (Class C3) and to increase the maximum transmitting power for Class A FM stations, (MM Docket No. 88-375). Summary: The Commission will consider whether to take further action regarding an additional intermediate FM broadcast station class (Class C3) in Zone 11. The proposed power increase for Class A FM broadcast stations will not be considered at this meeting, but will be considered separately at a future date.

Mass Media—2—Title: In the Matter of Formulation of Policies and Rule Relating to Broadcast Renewal Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process (BC Docket No. 81-742). Summary: The Commission will consider action in this proceeding.

Mass Media—3—Title: In the Matter of Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301) Gen. Docket No. 88-328). Summary: The Commission will consider whether any changes should be made to FCC Form 301 and related policies.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Issued: March 23, 1989.
Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 89-7344 Filed 3-23-89; 3:24 pm]
BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:25 p.m. on Tuesday, March 21, 1989, the Board of Directors of the Federal Deposit Insurance Corportion met in closed session to consider (1) matters relating to the possible closing of certain insured banks; (2) a recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets: Case No. 47,295 Golden Pacific National Bank, New York City (Manhattan), New York; (3) recommendations regarding administrative enforcement proceedings; and (4) a personnel matter.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: March 22, 1989.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 89-7274 Filed 3-23-89; 11:46 am]
BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Thursday, March 30, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Certification for Payment of 1988 Primary Matching Funds.
Inspector General—Proposed Classification.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 89-7345 Filed 3-23-89; 3:25 pm]
BILLING CODE 6715-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 22, 1989.

TIME AND DATE: 10:00 a.m., Wednesday, March 29, 1989.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Part Open & Part Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Possible revisions of and additions to present Commission Procedural Rules 70-84. 29 CFR 2700.70-84.

2. *BethEnergy Mines, Inc.*, Docket No. PENN 87-94, etc. (Issues include

whether BethEnergy violated 30 CFR 75.1704). This portion will be closed.

Any person intending to attend the open portion of this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

It was determined by a unanimous vote of Commissioners that BethEnergy Mines be considered in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629 / (202) 566–2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89–7311 Filed 3–23–89; 2:46 pm]

BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Thursday, March 30, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Policy regarding annual leave program for officers.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: March 23, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–7280 Filed 3–23–89; 11:47 am]

BILLING CODE 6210–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday, March 30, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance beween 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed amendments to Regulation CC (Availability of Funds and Collection of Checks) and revisions to its Official Commentary. (Proposed earlier for public comment; Docket No. R–0649)

2. Preemption determination under Regulation CC (Availability of Funds and Collection of Checks) regarding the funds availability laws of Wisconsin. (Proposed earlier for public comment; Docket No. R–0657)

3. Request by the Education Foundation of State Bank Supervisors for funding assistance.

Discussion Agenda

4. Proposed amendment to Regulation CC (Availability of Funds and Collection of Checks) to restrict certain delayed disbursement practices. (Proposed earlier for public comment; Docket No. R–0639)

5. Proposed amendments to Regulation Z (Truth in Lending) implementing the Fair Credit and Charge Card Disclosure Act to require certain disclosures by credit and charge card issuers. (Proposed earlier for public comment; Docket No. R–0654)

6. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: March 23, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–7281 Filed 3–23–89; 11:47 am]

BILLING CODE 6210–01–M

Corrections

Federal Register
Vol. 54, No. 57
Monday, March 27, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 87-167]

Importation of Meat and Animal Products

Correction

In rule document 89-3806 beginning on page 7391 in the issue of Tuesday, February 21, 1989, make the following correction:

On page 7393, in the third column, immediately under the heading "**§ 94.6 [Amended]**" insert amendatory instruction 6 to read as follows:

6. In § 94.6, the first sentence in footnote 1 is revised to read:

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Reg. H, Reg Y; Docket No. R-0628]

Capital; Risk-Based Capital Guidelines

Correction

In rule document 89-1587 beginning on page 4186 in the issue of Friday, January 27, 1989, make the following corrections:

Appendix A to Part 208—[Corrected]

1. In Appendix A to Part 208, on page 4205, in the second column, under "I. Interest Rate Contracts", in the ninth line, "forward deposits" should read "forward forward deposits".

Appendix A to Part 225—[Corrected]

2. In Appendix A to Part 225, on page 4213, in the third column, footnote 25 was omitted and should be inserted to read as follows:

[25]The OECD-based group of countries comprises all full members of the Organization for Economic Cooperation and Development (OECD), as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the Fund's General Arrangements to Borrow. The OECD includes the following countries: Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, Finland, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Saudi Arabia has concluded special lending arrangements with the IMF associated with the Fund's General Arrangements to Borrow.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 291

[Docket No. 83N-0249]

National Institute on Drug Abuse; Methadone in Maintenance and Detoxification; Joint Revision of Conditions for Use

Correction

In rule document 89-4684 beginning on page 8954 in the issue of Thursday, March 2, 1989, make the following corrections:

1. On page 8956, in the 2nd column, under *Rehabilitative Services*, in the 15th line, "§ 291.55(d)(3)(iv)(A)(*1*)" should read "§ 291.505(d)(3)(iv)(A)(*1*)".

§ 291.505 [Corrected]

2. On page 8961, in the 2nd column, in § 291.505(b)(2)(i), in the 24th line, after "dispensed at" insert "the facility. Before medication may be administered or dispensed at".

3. On the same page, in § 291.505(b)(2)(i), in the third column, in the first line, after "within" insert "three".

4. On page 8964, in § 291.505(d)(1)(iv), in the 2nd column, in the 13th line, "patient" should read "parent".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ray Batchelor Livestock; Withdrawal of Approval of Applications for Animal Feeds Bearing or Containing a New Animal Drug

Correction

In notice document 89-5274 beginning on page 9896 in the issue of Wednesday, March 8, 1989, make the following correction:

On page 9897, in the first column, in the last paragraph, the seventh line from the bottom should read: "Withdrawal of approval of applications".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M-0002]

Sola/Barnes-Hind; Premarket Approval of Polycon® HDK (Silafocon B) Gas Permeable Contact Lens for Extended Wear (Clear and Tinted)

Correction

In notice document 89-5275 appearing on page 9898 in the issue of Wednesday, March 8, 1989, make the following correction:

On page 9898, in the second column, in the first paragraph, the second line should read: "Devices Panel, an FDA advisory".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental Research; Meeting for Industry and Research Representatives Regarding the NIDR "Long-Range Plan for the 1990s"

Correction

In notice document 89-5978 appearing on page 10730 in the issue of Wednesday, March 15, 1989, make the following corrections:

1. In the first column, in the sixth line, "be" should read "by".

2. In the same column, in the paragraph numbered 3, in the fourth line "Mineralized" was misspelled.

BILLING CODE 1505-01-D

OFFICE OF MANAGEMENT AND BUDGET

Federal Procurement Policy Office

Issuance of Policy Guidance on the Buy American Act of 1988

Correction

In notice document 89-4998 beginning on page 9112 in the issue of Friday, March 3, 1989, make the following corrections:

On page 9113, in the 2nd column, in the 2nd complete paragraph, the 21st line should read: "sections 4(c) or 4(d) of the Act, it could".

On page 9114, in the first column, in the second complete paragraph, the second line should read: "only to services provided by contractors".

On the same page, in the same column, in the fourth complete paragraph, the first line should read: "Answer-" "Construction services".

On the same page, in the same column, in the fourth complete paragraph, the fifth line should read: "22.41. "Construction services" do not".

On the same page, in the third column, in the fifth complete paragraph, the fifth line should read: "subject to sanctions;".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-110-AD; Amdt. 39-6163]

Airworthiness Directives Boeing Model 727 Series Airplanes

Correction

In rule document 89-6268 beginning on page 11175 in the issue of Friday, March 17, 1989, make the following correction:

§ 39.13 [Corrected]

On page 11176, under **Boeing**, in the fifth paragraph, before "Perform" insert "2.".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWA-3]

Establishment of an Airport Radar Service Area; San Jose, CA

Correction

In rule document 89-5137 beginning on page 9406 in the issue of Monday, March 8, 1989, make the following corrections:

On page 9407, in the first column, between the first and second line, insert "bearing of the airport, clockwise to the Oakland VOR 161° radial."

On page 9408, in the first column, under **Request for Comments**, the fifth line should read: "altitude of 6,000 feet MSL (Area B of the".

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 35a

[INTL-52-86]

Income Taxes; Information Reporting and Backup Withholding

Correction

In proposed rule document 89-6335 beginning on page 11236 in the issue of Friday, March 17, 1989, make the following corrections:

On page 11236, in the third column, in the **SUMMARY**, the fifth line should read: "to the Internal Revenue Service". On the same page, in the same column, under **SUPPLEMENTARY INFORMATION**, the 18th line should read: "section 6044 (a) and (c), section 6043,".

BILLING CODE 1505-01-D

federal register

Monday
March 27, 1989

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed 1989–90 Migratory Game Bird Hunting Regulations (Preliminary); Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed 1989–90 Migratory Game Bird Hunting Regulations (Preliminary)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish hunting seasons, daily bag and possession limits, and shooting hours for designated groups or species of migratory game birds in the conterminous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands during 1989–90. The Service annually prescribes migratory game bird hunting regulations. These regulations provide hunting opportunities, a popular form of outdoor recreation, to the public and aid Federal and State governments in the management of migratory game birds. Drought, and associated agricultural impacts, and low duck breeding populations over a period of years have led to reduced fall duck flights. Recovery is likely to span several years and may require the continuation of restrictive hunting regulations in 1989.

DATES: The comment period for proposed early-season regulations frameworks for the United States, including Alaska and Hawaii; and Puerto Rico, and the Virgin Islands, will end on July 21, 1989; and for late-season proposals (seasons opening on or about October 1 or later) on August 28, 1989. Public Hearings: Early-Season Regulations, including those for the conterminous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands—June 22, 1989, at 9 a.m.; Late-Season Regulations—August 3, 1989, at 9 a.m. Both public hearings will be held in the Auditorium, Interior Department Building, 18th and C Streets, NW., Washington, DC.

ADDRESS: Comments and requests to testify may be mailed to Director, (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634—Arlington Square, Washington, DC 20204. Comments received may be inspected from 8 a.m. to 4 p.m. at the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Byron K. Williams, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service proposes to establish hunting seasons, bag and possession limits, and shooting hours for migratory game birds during 1989–90 under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR Part 20.

"Migratory game birds" are those migratory birds so designated in conventions between the United States and several foreign nations for the protection and management of these birds. For the 1989–90 hunting season, regulations will be proposed for certain designated members of the avian families: Anatidae (ducks, geese, brant, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, and moorhens and gallinules); and Scolopacidae (woodcock and snipe). These proposals are described under Proposed 1989–90 Migratory Game Bird Hunting Regulations (Preliminary) in this document.

Review of the Duck Situation

Widespread drought, and agricultural impacts on wetlands in Canada and the north-central United States led to low duck breeding populations and the second lowest fall duck flight on record in 1988. The problem is not due to a single year of severe drought in 1988, but the result of several years of repeated poor conditions. Some important breeding areas in Prairie Canada have been extremely dry since 1980. Drought has also adversely affected important migration and wintering areas.

Agricultural impact on marshes and surrounding habitats in Prairie Canada accelerated because of the drought and seriously reduced the capabilities of traditional Canadian prairie habitats to produce ducks. Several years of good climatic conditions will be required before many drought-stricken areas can recover, revegetate, and produce ducks again. However, because of the widespread destruction of natural wetlands and the conversion of potential nesting areas to agriculture, many areas once important to breeding ducks have been permanently affected. This factor will influence decisions about waterfowl harvest management for more than a single year. Our current waterfowl situation underscores the importance of the North American Waterfowl Management Plan, an international agreement of the United States and Canada aimed at preservation and enhancement of sufficient wetlands and other habitats on this continent to support larger fall flights. Reduced breeding populations and production reflect the effects of both short and long-term stress on primary habitats.

Maintenance of basic duck breeding populations is our primary objective, especially since these populations have not produced well in recent years. Further, it is likely that the impacts will persist for some time even if weather patterns change. High harvest on populations with poor recruitment is not in the best interest of the resource, or the future of waterfowl hunting. For these reasons, the Service established restrictive hunting season frameworks in 1988.

The substantial reductions in duck season lengths, framework dates, and bag limits, as well as delayed shooting hours, were strong measures designed to reduce hunting opportunity and harvest. Many of the premises behind special seasons and other mechanisms in place prior to the 1988 hunting season were developed to allow increased harvest opportunity at a time when populations were judged capable of providing it. The Service feels that many of the regulations suppended last year are not consistent with the current status of the duck resource. In view of the present duck population and habitat conditions, and the likelihood of an extended recovery period, the Service proposes to continue the restrictive frameworks in 1989, including the suspension of selected harvest management tools and special seasons and limits. *Depending upon the actual status of waterfowl and habitat in 1989, it may be necessary to further restrict duck season framerworks.*

We will, however, review these framework proposals as information on habitat, breeding populations and harvest become available. Several checkpoints can be identified regarding this review. Reports on State hunting seasons and fall and winter habital conditions presented at the winter Technical Section meetings will be cosidered. An assessment of the habitat-precipitation situation on the prairie breeding grounds will be made at the end of winter (mid-March); principal breeding habitats and duck breeding populations will be surveyed in May; harvest information from the 1988–89 season will be available in early July; breeding ground habitat and duck production will be surveyed again in July and fall flight forecasts will be issued in late July.

As regulatory decisions approach, all interested parties will have access to the

same basic population and habitat information, and the Service will continue to support the annual process whereby Flyway Councils, through consultants to the Service, States, organizations and the public provide information that is considered in the development of regulations frameworks.

Assessment of Regulatory Changes

In recognition of the magnitude of the regulatory changes enacted in 1988 the Director, in a September 1988 letter to all State Fish and Game Directors, called for a joint effort to assess the impact of the suspension of the September teal season, point system, one half hour before sunrise shooting hours, and bonus duck bags, on the resource and its users. To this end the Service stated the intent to review existing information on the use of these management tools. In addition, the Service sought a review of the Columbia Basin Mallard Management Unit and High Plains Management Unit by the Pacific and Central Flyways, respectively. Further, the Service has begun to examine the use of zones and split seasons in the management of ducks.

The Service has been assembling information on each of the suspended management options and duck zones and splits. The Director's September letter also called on the States to review information available to them and work through the Flyway Representatives to insure consideration of this added information. To date, a substantial volume of records and reports has been gathered on the regulatory mechanisms that influence harvest. It has proved to be time-consuming to merely assemble this material. It is unclear how much analysis has been done on the available information and how much can be done. For example, there are a large number of reports on zoning studies but much of the material is either not directly comparable or the base data from which inferences are drawn is limited.

The Service believes several steps are required to properly assess these regulatory suspensions in 1988 and suggests the following schedule and actions to accomplish this task:

1. The Service will list the material available to date for each suspended regulatory option prior to the Technical Section meetings in February and March 1989.

2. The Flyway Representatives will review the listings with the Technical Sections in February and March 1989.

3. In discussion with the Technical Sections we well seek joint agreement on how best to accomplish a review of existing data, determine what judgements can be made from the material at hand, and what judgement or mangement questions require additional information.

4. Full review and assessments cannot be completed at the winter-spring Technical Section meetings. It is suggested that a reasonble schedule is to plan on compiling and distributing a report on each of the regulatory issues identified for assessment by the end of 1989, so that evaluation may be made before the 1990 regulations cycle. To repeat, these regulatory issues are:

a. Shooting hours.

b. Point system.

c. Special seasons including September teal season and bonus birds.

d. Zones and splits.

5. More complete information exists on the Columbia Basin and High Plains Management Units and review is proceeding through the Pacific and Central Flyways. This will allow full discussion at early 1989 Technical Section meetings.

There is no assurance that each or any of the end of year reports will provide definitive answers to the maangement issues raised. The reports should, however, guide our efforts in some areas and identify the information needed in other areas. The Service awaits the results of these reviews before offering any proposals concerning support for, or modification of, these management options.

Notice of Intention to Establish Open Seasons

This notice announces the intention of the Director, U.S. Fish and Wildlife Service, to establish open hunting seasons, daily bag and possession limits, and shooting hours for certain designated groups or species of migratory game birds for 1989–90 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

Factors Affecting Regulations Process

This is the first in a series of proposed and final rulemaking documents for migratory game bird hunting regulations. Proposed shooting hours and season frameworks, including daily bag and possession limits, are set forth for varous groups of migratory game birds for which these regulations ordinarily do not vary signficantly year to year.

The proposals set forth here and the schedule by which more detailed proposals for these and other species will be developed depend upon a number of factors. Among these are the times when various annual population, habitat, and harvest surveys are conducted and results are available for analysis; times of migration and other biological considerations; and times during which hunting may be allowed. The regulatory process for migratory game birds is strongly influenced by the times when the best and latest information is available for consideration in the development of regulations. For these reasons, the overall regulations process for hunting seasons and limits is divided into the following segments: (1) Regulations for migratory game birds in Alaska, Puerto Rico, the Virgin Islands, and Hawaii, and seasons in the remainder of the United States opening prior to October 1 (early seasons); (2) seasons opening in the remainder of the United States about October 1 and later (late seasons) and (3) regulations for migratory game birds on certain Indian reservations and ceded lands. Regulations development for each of the three categories will follow similar but independent schedules. Proposals relating to the harvest of migratory game birds that may be initiated after publication of this proposed rulemaking will be made available for public review in supplemental proposed rulemakings to be published in the **Federal Register**. Also, additional supplemental proposals will be published for public comment in the **Federal Register** as population, habitat, harvest, and other information becomes available.

Because of the late dates when certain of these data become available, it is anticipated that comment periods on some proposals will necessarily be abbreviated. Special circumstances that limit the amount of time which the Service can allow for public comment are involved in the establishment of these regulations. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on one hand, to establish final rules at a time early enough in the summer to allow State agencies to adjust their licensing and regulatory mechanisms and, on the other hand, the lack before late July of current data on the status of most waterfowl.

Publication of Regulatory Documents

The establishment of migratory game bird hunting regulations in the United States involves a series of regulatory announcements published in the **Federal Register** in accordance with the Administrative Procedure Act. The publication of these documents is divided into three phases, as follows:

1. Proposed rulemakings—proposals to amend Subpart K (and other subparts when necessary) of 50 CFR Part 20, including supplementary proposed

migratory game bird hunting regulations, and/or regulations frameworks which prescribe shooting hours, season lengths, bag and possession limits, and outside dates within which States may make season selections.

2. Final rulemakings—frameworks. Final migratory game bird regulations frameworks which prescribe shooting hours, season lengths, bag and possession limits, and outside dates within which States may make season selections.

3. Final rulemakings—season selections. Amendments to the various specific sections of Subpart K (and other subparts when necessary) of 50 CFR Part 20 based on the final regulations frameworks and on season selections communicated by the States to the Service.

Major steps in the 1989–90 regulatory cycle relating to public hearings and **Federal Register** notifications are illustrated in the accompanying diagram. Dates shown relative to publication of **Federal Register** documents are target dates. All dates shown for frameworks and seasons in the Service's regulatory documents are inclusive.

The proposed or final regulations section of this and subsequent documents outline hunting frameworks and guidelines that are organized under 30 headings. These headings are:

1. Shooting hours.
2. Frameworks for ducks in the conterminous United States—outside dates, season length and bag limits.
3. American Black Ducks.
4. Wood Ducks.
5. Sea Ducks.
6. September Teal Seasons.
7. Extra Teal Option.
8. Experimental September Duck Seasons.
9. Special Scaup Season.
10. Extra Scaup Option.
11. Mergansers.
12. Canvasback and Redhead Ducks.
13. Duck Zones.
14. Frameworks for geese and brant in the conterminous United States—outside dates, season length and bag limits.
15. Tundra Swan.
16. Sandhill Cranes.
17. Coots.
18. Common Moorhens and Purple Gallinules.
19. Rails.
20. Common Snipe.
21. Woodcock.
22. Band-tailed Pigeons.
23. Mourning Doves.
24. White-winged and White-tipped Doves.
25. Migratory Bird Hunting Seasons in Alaska.
26. Migratory game birds in Puerto Rico and doves and pigeons in the Virgin Islands.
27. Migratory game bird seasons for falconers.
28. Hawaii Mourning Doves.
29. Migratory bird hunting on Indian Reservations.
30. Other.

Subsequent documents will refer only to numbered items requiring attention. Therefore, items requiring no attention will be omitted and the remaining item numbers will be discontinuous and appear incomplete.

Non-toxic shot regulatory proposals and final regulations are published separately under § 20.21 of Subpart C and § 20.108 of Subpart K.

Objectives of the Migratory Bird Hunting Regulations

The objectives of these annual regulations are as follows:

1. To provide an opportunity to harvest a portion of certain migratory game bird populations by establishing legal hunting seasons.
2. To limit harvest of migratory game birds to levels compatible with their ability to maintain their populations.
3. To avoid the taking of endangered or threatened species so that their continued existence is not jeopardized, and their conservation is enhanced.
4. To limit taking of other protected species where there is a reasonable possibility that hunting is likely to adversely affect their populations.
5. To provide equitable hunting opportunity in various parts of the country within limits imposed by abundance, migration, and distribution patterns of migratory game birds.
6. To assist, at times and in specific locations, in preventing depredations on agricultural crops by migratory game birds.

The management of migratory birds in North America is international in scope, and involves other nations, notably Canada and Mexico. Within the United States, other Federal agencies, State conservation agencies, national and regional conservation groups, universities, and the public provide much support to the achievement of these objectives.

Data Used in Regulatory Decisions

The establishment of hunting regulations for migratory game birds in the United States during the 1989–90 season will take into consideration available population information, data from harvest surveys, and information on habitat conditions. Consideration will also be given to accumulated data and trends. The main sources of data are operational surveys conducted by the U.S. Fish and Wildlife Service in cooperation with the Canadian Wildlife Service, Direccion General de Conservacion Ecologica de los Recursos Naturales of Mexico, State and Provincial wildlife agencies, and others. The Service will also consider technical information provided by consultants of the four waterfowl flyway councils. The information from these sources will be analyzed by the Service with an opportunity for the public to review and provide comments on management rationales and proposed regulations, either in public hearings, by correspondence, or other communications.

Various surveys are used to ascertain the status, condition, and trends of migratory game bird populations. These include annual surveys of major waterfowl wintering habitats in the United States and in portions of Mexico each January; aerial surveys of major waterfowl production areas in the United States and Canada in May and early June for breeding population data, and again in July for production information; nationwide surveys in the United States and Canada of waterfowl hunters and the waterfowl harvest, including their geographical and temporal distributions, and species, age, and sex composition of the harvest; and band recovery information. Waterfowl breeding pair and production surveys also provide information on the abundance, duration, and quality of water and other habitat conditions in major production areas. Information on waterfowl populations and habitat conditions outside the aerial survey area is furnished by cooperating State, Provincial, and private agencies. Banding information provides insight into shooting pressures sustained by migratory game bird populations under different population levels and types of regulations. When viewed over many years, information on harvests and regulations is useful for predicting approximate harvest levels which may result from various regulations changes.

Many of the surveys conducted primarily for ducks also provide information on geese. In addition, satellite imagery is used to monitor the rate at which snow and ice disappear from subarctic and arctic breeding grounds traditionally used by most species and the greatest numbers of North American geese. Field observations of geese in the fall and winter also provide information on the production success of the past breeding

season. Special population surveys are undertaken for many identifiable populations of geese throughout the year.

An annual call-count survey conducted nationwide in the United States in late May and early June provides information on the breeding population of mourning doves. Information from past years and the current year is used to establish population trends. An annual singing-ground survey is conducted throughout the woodcock breeding range in the eastern United States and Canada. Insight into reproductive success is obtained from a wing-collection survey of woodcock hunters in the United States; data from this survey indicates the age and sex composition of the harvest and its geographical and temporal distribution. Accumulated and current data are examined for possible long-term trends in population size and productivity. Information on white-winged dove populations in Texas and the Southwest is provided by cooperating State agencies. Spring surveys of sandhill cranes are conducted annually with emphasis on the key staging area of the species along the Platte River in central Nebraska and the San Luis Valley of Colorado. The Service also solicits information on these and other species from knowledgeable individuals.

Definition of Flyways

Flyways are administrative units with broad biological-ecological similarities frequently used for reference in setting hunting regulations on many migratory game birds. They are defined as follows:

Atlantic Flyway: Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway: Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway: Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas; Colorado and Wyoming east of the Continental Divide; Montana east of Hill, Chouteau, Cascade, Meagher and Park Counties; and New Mexico east of the Continental Divide but outside the Jicarilla Apache Indian Reservation.

Pacific Flyway: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher, and Park, and all counties west thereof. Flights of most migratory game birds breeding or produced in Alaska are more strongly oriented to this flyway than to the other flyways.

Definitions of Mourning Dove Management Units

Mourning Dove Management Units are administrative units based upon a reasonable delineation of independent mourning dove population segments encompassing the principal breeding, migration, and United States wintering areas for each population. They are used for reference in setting mourning dove hunting regulations and are defined as follows:

Eastern Management Unit: Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.

Central Management Unit: Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Migratory Bird Hunting on Indian Reservations

In the September 3, 1985, **Federal Register** (50 FR 35762), the Service implemented guidelines for establishing special migratory bird hunting regulations on Federal Indian reservations and ceded lands, and amended § 20.110 of 50 CFR Part 20 by prescribing final hunting regulations for certain tribes in past hunting seasons. The guidelines provide appropriate flexibility for tribal members to exercise their reserved hunting rights while ensuring that the migratory bird resources receives necessary protection. Use of the guidelines is not necessary if a tribe wishes to observe the hunting regulations established in the State(s) in which the reservation is located. On February 27, 1989, (at 54 FR 8221), the Service gave notice of its intent to establish special migratory bird hunting regulations for interested Indian tribes in the 1989–90 hunting season.

Hearings

Two public hearings pertaining to 1989–90 migratory game bird hunting regulations are scheduled. Both meetings will be conducted in accordance with 455 DM 1 of the Departmental Manual. On June 22 a public hearing will be held at 9 o'clock in the Auditorium of the Department of the Interior Building, on C Street, between 18th and 19th Streets, NW., Washington, DC. This hearing is for the purpose of reviewing the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, rails, gallinules and moorhens, common snipe, and sandhill cranes. Proposed hunting regulations will be discussed for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; September teal seasons in the Mississippi and Central Flyways; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. On August 3 a public hearing will be held at 9 o'clock in the Auditorium of the Department of the Interior Building, address above. This hearing is for the purpose of reviewing the status and proposed regulations for waterfowl not previously discussed at the June 22 public hearing. The public is invited to participate in both hearings.

Persons wishing to participate in these hearings should write the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634—Arlington Square, Washington, DC 20240, or telephone (703) 358–1714. Those wishing to make statements should file copies of them with the Director before or during each hearing.

Public Comments Solicited

Based on the results of current migratory game bird studies and having due consideration of all data and views submitted by interested parties, the amendments resulting from these proposals will specify open seasons, shooting hours, and bag and possession limits for doves, pigeons, rails, gallinules and moorhens, woodcock, common snipe, cranes, and waterfowl in the contiguous United States; coots, cranes, common snipe and waterfowl in Alaska; certain migratory game birds in Puerto Rico and the Virgin Islands; and mourning doves in Hawaii.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons are invited to submit written comments, suggestions, or recommendations regarding the proposed amendments.

Final promulgation of migratory game bird hunting regulations will take into consideration all comments received by the Director. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals. Interested persons are invited to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESS.**

Comments received on the proposed annual regulations will be available for public inspection during normal business hours at the Service's office in Room 634, 4401 North Fairfax Drive, Arlington, Virginia. The Service will consider but may not respond in detail to each comment. Specific comment periods will be established for each of the four series of proposed rulemakings. All relevant comments will be accepted through the closing date of the last comment period on the particular proposal under consideration. As in the past, the Service will summarize all comments received during the comment period and respond to them.

Flyway Council Meetings

The Service published a final rule in the **Federal Register** dated December 22, 1981 (46 FR 62077) which established certain procedures in the development of annual migratory game bird hunting regulations. This rule, codified at 50 CFR 20, Subpart N, took effect on January 21, 1982. One provision is to publish notification of meetings of waterfowl flyway councils where Department of Interior officials will be in attendance. In this regard, Departmental representative will be present at the following winter meetings of the various flyway councils:

Date: March 19, 1989. Altantic Flyway Council, 9:00 a.m.; Mississippi Flyway Council, 9:00 a.m.; Central Flyway Council, 8:30 a.m.; Pacific Flyway Council, 12:00 noon; National Waterfowl Council, 3:30 p.m.

The Council meetings will be held at The Omni Shoreham Hotel, Washington, DC.

NEPA Consideration

In 1975 the Service determined that the annual migratory bird hunting regulations constituted a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969. Consequently, the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was prepared and filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement (FES). These have addressed regulations for various species of migratory game birds and hunting strategies. In 1986 the Service initiated preparation of a supplemental environmental impact statement (SEIS) on the FES. A draft SEIS was released on September 1, 1987, and public hearings were held in several locations across the country in mid-November. The final SEIS was completed, filed with the Environmental Protection Agency on June 9, 1988, and a Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582).

Endangered Species Act Consideration

Prior to issuance of the 1989–90 migratory game bird hunting regulations, consideration will be given to provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to insure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of this Act may cause changes to be made to proposals in this and future supplemental proposed rulemaking documents.

Regulatory Flexibility Act, Executive Order (E.O.) 12291, and the Paperwork Reduction Act

In complying with these requirements during the 1981–82 regulatory development cycle, and with Office of Management and Budget concurrence, the Service prepared a Determination of Effects, a Preliminary Regulatory Impact Analysis (PRIA), a Final Regulatory Impact Analysis (FRIA), and a Memorandum of Law. For further information see the **Federal Register:** March 25, 1981, at 46 FR 18669; August 17, 1981, at 46 FR 41739; August 21, 1981, at 46 FR 42643; and September 18, 1981, at 46 FR 46543. The rules for the 1981–82 hunting season were determined to be "major," because the expenditures arising from these regulations exceed $100 million annually and represent a major Federal action.

An updated FRIA, focusing on waterfowl hunting, was completed by the Service in February 1988. Preliminary economic information was utilized from the *1985 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation* which indicated that hunters expended $1072 million for migratory bird hunting in 1985.

A Determination of Effects approved by the Assistant Secretary, Fish and Wildlife and Parks, on March 1, 1989, concluded that the hunting framework being proposed for 1989–90 were "major" rules, subject to regulatory analysis. In accordance with Office of Management and Budget instructions, the Service recently prepared an update of the 1981 Final Regulatory Impact Analysis for use in the development of the 1989–90 migratory bird hunting regulations to incorporate new economic information and waterfowl hunter activity and harvest information from the 1986–87 season. The summary of the 1989 update of the 1981 FRIA follows:

New information which can be compared to that appearing in the 1988 update of the 1981 Final Regulatory Impact Analysis (FRIA) includes estimates of the 1987 fall flight of ducks from surveyed areas, and hunter activity and harvest information from the 1987–88 hunting season. The data indicate that the total 1987 fall flight of ducks and the fall flights in each flyway were predicted to be slightly more than those of 1986. Because of the continued poor status of ducks, restrictive hunting regulations that were initiated in 1985 were continued in 1987. Hunter numbers and hunter days decreased slightly from the previous year, while seasonal trips per hunter remained constant. Continuation of the restrictive regulations that were established in 1985 was partly responsible for the reduced number of hunters. In spite of the restrictive regulations, seasonal duck harvest per hunter increased.

Copies of the updated FRIA are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634—Arlington Square, 18th and C Streets, NW., Washington, DC 20240.

The Department of the Interior has determined that this document is a major rule under E.O. 12291 and certifies that this document will have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Service plans to issue its Memorandum of Law for the migratory

game bird hunting regulations at the time the first of these rules is finalized.

Authorship

The primary author of the proposed rules on annual hunting regulations is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Byron K. Williams, Acting Chief, (703) 358–1714.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transporation, Wildlife.

The rules that eventually will be promulgated for the 1988–89 hunting season are authorized under the Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

Proposed 1989–90 Migratory Game Bird Hunting Regulations (Preliminary)

The following general frameworks and guidelines for hunting certain waterfowl, sandhill cranes, mourning doves, white-winged doves, white-tipped doves, Zenaida doves, scaly-naped pigeons, band-tailed pigeons, moorhens and gallinules, rails, coots, common snipe, and woodcock during the 1989–90 season are proposed. Changes or possible changes, when noted, are in relation to 1988–89 final frameworks. In this respect, minor date changes due to annual variation in the calendar dates of specific days of the week, are regarded as "no change." All mentioned dates are inclusive. Where applicable, information is provided about proposals for change already submitted to the Service or expected to be submitted in the near future. These and the Service's responses or comments follow the frameworks being proposed. Service views on the items in this proposed rulemaking are subject to change depending on public comments, and additional data and information that may be received later.

The proposed frameworks and guidelines, as compared to the 1988–89 final frameworks, are described below:

1. *Shooting hours.* (Change.) In 1988 hunting regulations for early seasons permitted shooting for all migratory game birds one-half hour before sunrise, while late season regulations prohibited the shooting of any waterfowl before sunrise.

In 1989–90 the Service proposes to restrict the opening of shooting hours to sunrise and the close of shooting hours to sunset for all migratory game birds (see numbered items that follow) except as follows:

a. Shooting hours for doves and pigeons would remain one-half before sunrise to sunset.

b. In all States where migratory game bird seasons fall outside the earliest duck (including sea ducks) season opening date and the latest duck season closing date in the State, these migratory game birds may be taken from one-half hour before sunrise to sunset.

2. *Frameworks for ducks in the conterminous United States—outside dates, season length and bag limits.* (Possible change). In 1988, survey information indicated low breeding populations and poor production. Breeding habitat was diminished in quantity and quality by the on-going drought. The Service forecasted a low 1988 fall flight of ducks and estimated restrictive regulatory frameworks designed to reduce the duck harvest by at least an additional 25 percent from the average achieved during the 1985–87 period, and thus protect breeding stock. Pending the availability of current duck population, habitat and harvest information, and the receipt of recommendations from the four flyway councils, specific duck framework proposals for opening and closing dates, season lengths and bag limits are deferred. Exceptions to the regular duck-season frameworks are given in various numbered items that follow.

3. *American black ducks.* (Possible change.) Continuation of restrictive regulations are proposed by the Service. Specific frameworks are deferred until after the receipt of current population and habitat data for 1989 and the 1988–89 harvest data.

Harvest restrictions on black ducks were generally maintained during the 1988–89 hunting season as duck season lengths were reduced from 40 days to 30 days. Although duck seasons were shortened, fewer States in the Atlantic Flyway reduced black duck hunting days within the regular duck seasons than in previous years. In the Mississippi Flyway, suspension of the point system may have had some influence on the harvest of black ducks. The effects of the regulatory changes in 1988 on the harvest of black ducks are not yet known. States in the Atlantic and Mississippi Flyways continue their goal of reducing black duck harvest by 25 percent from the 1977–81 period.

The Service will consult with Canada concerning the evaluation of their 5-year black duck harvest reduction project and will ask them to coordinate their black duck harvest plans with us.

4. *Wood ducks.* (Possible change.) In 1988, regulations for this species permitted an option of an early October hunting season in the southeast with certain limiting guidelines during which no special wood duck bag and possession limits applied. Regular season frameworks and bag limit guidelines for wood ducks similar to those of 1988 are proposed at this time. Special seasons and limits, as well as future harvest strategies, are currently under review in the Atlantic and Mississippi Flyways and may change upon completion of this review. An overall wood duck management strategy may be proposed.

5. *Sea ducks.* (Change.) A maximum open season of 107 days for taking scoter, eider, and oldsquaw ducks is proposed, with shooting hours from sunrise to sunset, during the period between September 15, 1989, and January 20, 1990, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season conventional or point-system daily bag and possession limits.

The daily bag limit is 7 and the possession limit is 14, singly or in the aggregate of these species. Within the special sea duck areas, during the regular duck season, the States may set, in addition to the regular limits, a daily bag limit of 7 and a possession limit of 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate of these species.

Any State desiring its sea duck season to open in September must make its selection no later than August 9, 1989. Those States desiring their sea duck season to open after September may make their selection at the time they select their regular waterfowl seasons.

6. *September teal season.* (No change.) The Service proposes to continue the

suspension of the September teal season for 1989–90.

7. *Extra teal option.* (No change.) The Service proposes to continue the suspension of the extra teal option for 1989–90.

8. *Experimental September Duck Seasons.* (Possible change.) The Service does not propose any change in the experimental September duck seasons in Kentucky, Tennessee and Florida at this time. These seasons were exclusively wood duck seasons in 1988. The Service has indicated the need to review wood duck harvest strategies, and since current experimental September duck seasons are now wood duck special seasons, they will be included in reviews of both wood duck harvest strategies and special seasons.

9. *Special scaup season.* (No change.) The Service proposes to continue the suspension of the special scaup seasons for 1989–90.

10. *Extra scaup option.* (No change.) The Service proposes to continue the suspension of the extra scaup option for 1989–90.

11. *Mergansers.* (No change.) States in the Atlantic and Mississippi Flyways may select separate bag limits for mergansers in addition to the regular duck bag limits during the regular duck season. The bag limit is 5 mergansers daily and 10 in possession. Elsewhere, mergansers are included within the regular daily bag and possession limits for ducks. The restriction on hooded mergansers of 1 daily and 2 in possession is continued in the Atlantic, Mississippi, and Central Flyways.

12. *Canvasback and redhead ducks.* (No change.) Proposed seasons and bag limits for canvasbacks and redheads are unchanged from those in effect in 1988. The season was closed nationwide for canvasbacks during the 1988–89 hunting season. Redhead bag limits were 2 per day in the Atlantic and Pacific Flyways and 1 per day in the Central and Mississippi Flyways. The 3-year average breeding population level identified in the environmental assessment *Proposed Hunting Regulations on Canvasback Ducks, 1983* will guide Service actions in 1989 regarding canvasback seasons.

13. *Duck Zones.* (Possible change.) In the March 21, 1986, **Federal Register** (51 FR 9862) the Service gave notice that it believes present duck hunting zones should not be modified and no new duck hunting zones should be initiated until some better informed judgments regarding their cumulative effect on the resource can be made. The issue of duck zones is currently under review by the Service in cooperation with the 4 flyway councils.

States in all flyways may split their waterfowl season into two segments. Previously, States in the Atlantic and Central Flyways, in lieu of zoning, could split their seasons for ducks or geese into three segments. Since it is proposed that new duck zones not be authorized, a 3-way split is also not offered to States not presently utilizing zoning for ducks.

14. *Frameworks for geese and brant in the conterminous United States—outside dates, season length and bag limits.* (No change.) The Canadian Wildlife Service, the four waterfowl flyway councils, State conservation agencies, and others traditionally provide population and harvest information used in setting annual regulations for geese and brant. The midwinter survey, the past season's waterfowl harvest surveys, and satellite imagery and ground studies for May and June of 1989 will provide additional information.

All Flyways. Seasons and bag limits are deferred pending receipt of additional information and recommendations. No significant changes from those in effect in 1988–89 are anticipated at this time.

15. *Tundra Swan.* (No change.) The following frameworks for tundra swans are proposed. In Utah, Nevada, Montana, North Dakota and South Dakota, an open season for taking a limited number of tundra swans may be selected subject to the following conditions:

A. Except in the Central Flyway portion of Montana, the season must run concurrently with the duck season; in the Central Flyway portion of Montana, the season must run concurrent with the goose season.

B. In Utah, no more than 2,500 permits may be issued authorizing each permittee to take 1 tundra swan.

C. In Nevada, no more than 650 permits may be issued authorizing each permittee to take 1 tundra swan in either Churchill, Lyon, or Pershing Counties.

D. In Montana (Pacific Flyway portion only), no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan in either Teton or Cascade Counties.

E. In Montana (Central Flyway portion only), no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan.

F. In North Dakota, no more than 1000 permits may be issued authorizing each permittee to take 1 tundra swan. The season must run concurrently with the season for taking light geese.

G. In South Dakota, no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan. The season must run concurrently with the season for taking light geese.

H. In North Carolina an experimental season for taking a limited number of tundra swans may be selected subject to the following conditions:

i. The season may be 90 days and must run concurrently with the snow goose season.

ii. The State must issue permits and obtain harvest and hunter participation data.

iii. No more than 6000 permits may be issued authorizing each permittee to take 1 tundra swan.

I. In New Jersey and Virginia an experimental season for taking tundra swans may be selected subject to the following conditions:

i. The season may be 90 days and must run concurrently with the snow goose season.

ii. The State must issue permits and obtain harvest and hunter participation data.

iii. In New Jersey no more than 200 permits and in Virginia no more than 600 permits may be issued authorizing each permittee to take 1 tundra swan.

J. In Alaska, in GMU22, an experimental season for taking tundra swans may be selected subject to the following conditions:

i. Season must run concurrently with the duck season.

ii. The State must issue permits and obtain harvest and hunter participation data.

iii. No more than 300 permits may be issued authorizing each permittee to take 1 tundra swan.

Additional information. A tundra swan hunt plan that addresses allowable harvest and allocation of harvest of Eastern Population tundra swans is available.

16. *Sandhill cranes.—Central Flyway—Regular seasons* (No change). Pending evaluation of harvest data from the 1988–89 seasons, sandhill crane hunting seasons may be selected within specified areas in Colorado, Kansas, Montana, North Dakota, South Dakota, Wyoming, New Mexico, Oklahoma and Texas outside the range of the Rocky Mountain Population of sandhill cranes, with no substantial changes in dates from the 1988–89 seasons. The daily bag limit will be 3 and the possession limit 6 sandhill cranes. The provision for a Federal sandhill crane hunting permit is continued in all of the above areas.

Additional Information—In a letter from the Texas Parks and Wildlife Department dated January 24, 1989, that State requested an expansion of the area open to the taking of sandhill cranes in central and north central

Texas. The additional area is proposed to be opened to help reduce crop depredations by cranes and to provide a limited additional recreational opportunity. Addition of the new area would move the existing boundary of Zone B eastward a distance ranging from about 105 miles to about 165 miles, making the eastern boundary to approximately coincide with Interstate 35. Season opening dates would be delayed in Zone B until December 2 (November 25 in 1988) to minimize the chance of a whooping crane being in the area during the open sandhill crane season. The Texas request for an expansion of the sandhill crane area needs review by the Central Flyway Council.

Central and Pacific Flyways—Special seasons (No change). Pending evaluation of harvest data from the 1988–89 seasons, sandhill crane hunting seasons within the range of the Rocky Mountain Population may be selected by Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming subject to the following conditions:

A. Outside dates are September 1–November 30, 1989; except September 1, 1989–January 31, 1990, in the Hatch-Deming Zone of southwestern New Mexico.

B. Season(s) in any State or zone may not exceed 30 days.

C. Daily bag limits may not exceed 3, and season limits may not exceed 9.

D. Participants must have in their possession while hunting a valid permit issued by the appropriate State.

E. Numbers of permits, areas open and season dates, protection plans for other species, and other provisions of seasons are consistent with the management plan and approved by the Central and Pacific Flyway Councils.

17. *Coots.* (No change.) Within the regular duck season, States in the Atlantic, Mississippi, and Central Flyways may permit a daily bag limit of 15 and a possession limit of 30 coots; States in the Pacific Flyway must select their coot season to run concurrent with their duck season and may permit 25 coots daily and in possession, singly or in the aggregate with gallinules.

18. *Common Moorhens and Purple Gallinules.* (No change.) States in the Atlantic and Mississippi Flyways may select hunting seasons of not more than 70 days between September 1, 1989, and January 20, 1990. Central Flyway States may select hunting seasons of not more than 70 days between September 1, 1989 and January 21, 1990. Any State may split its moorhen/gallinule season without penalty. The daily bag and possession limits may not exceed 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species, respectively. States may select moorhen/gallinule seasons at the time they select their waterfowl seasons. In this case, daily bag and possession limits will remain the same.

States in the Pacific Flyway must select their moorhen/gallinule hunting seasons to run concurrent with their duck seasons. A moorhen/gallinule season selected by any State or portion thereof in the Pacific Flyway may be the same as but not exceed its waterfowl season, and the daily bag and possession limits may not exceed 25 coots and moorhens, singly or in the aggregate of the two species.

19. *Rails.* (No change.) The States included herein may select seasons between September 1, 1989, and January 20, 1990, on clapper, king, sora, and Virginia rails as follows:

The season length for all species of rails may not exceed 70 days, and any State may split its rail season into two segments without penalty.

Clapper and king rails. A. In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, the daily bag and possession limits may not exceed 10 and 20 clapper and king rails, respectively, singly or in the aggregate of these two species.

B. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, the daily bag and possession limits may not exceed 15 and 30 clapper and king rails, respectively, singly or in the aggregate of the two species.

C. The season will remain closed on clapper and king rails in all other States.

Sora and Virginia rails. In addition to the prescribed limits for clapper and king rails, daily bag and possession limits not exceeding 25, singly or in the aggregate of sora and Virginia rails, may be selected in States in the Atlantic, Mississippi, and Central Flyways, and portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific Flyway. No hunting season is proposed for rails in the remainder of the Pacific Flyway.

20. *Common snipe.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may select hunting seasons between September 1, 1989, and February 28, 1990 not to exceed 107 days, except that in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, the season must end no later than January 31. Seasons between September 1, 1989, and February 28, 1990, not exceeding 93 days, may be selected in the Pacific Flyway portions of Montana, Wyoming, Colorado, and New Mexico.

All States in the Pacific Flyway, except those portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific Flyway, must select their snipe season to run concurrently with their duck season. In these Pacific Flyway States, except portions of the four States noted previously, it will be unlawful to take snipe when it is unlawful to take ducks.

Daily bag and possession limits may not exceed 8 and 16, respectively. Any State may split its snipe season into two segments.

States or portions thereof in the Atlantic, Mississippi, and Central Flyways may defer selection of snipe seasons until they choose their waterfowl seasons in August.

21. *Woodcock.* (Possible change.) The Service is reviewing the effects of February hunting of woodcock in some southern States and the zoning option for New Jersey. These issues will be discussed with Flyway Technical Committees prior to the 1989–90 hunting season.

A. *Central and Mississippi Flyways.* States in the Central and Mississippi Flyways may select hunting seasons of not more than 65 days with daily bag and possession limits of 5 and 10, respectively, to occur between September 1, 1989 and February 28, 1990. States may split their woodcock season without penalty.

B. *Atlantic Flyway.* The population of woodcock in the Atlantic Flyway has significantly declined since the 1960s. In 1985 the Service initiated a program whereby the hunting regulations for woodcock in the Atlantic Flyway were adjusted to bring harvest opportunities to a level commensurate with the current population status. No changes in seasons and bag limits from those in effect in 1988–89 are anticipated at this time pending an evaluation of the 1988 wing collection and 1989 singing ground surveys. For the 1989–90 hunting season in the Atlantic Flyway the Service proposes the following:

States in the Atlanic Flyway may select hunting seasons of not more than 45 days with daily bag and possession limits of 3 and 6, respectively, to occur between October 1, 1989 and January 31, 1990. States may split their woodcock season without penalty.

New Jersey may select North and South zone divided by State highway 70. The season in each zone may not exceed 35 days.

22. *Band-tailed pigeons.* (No change.)—*Pacific Coast States* California, Oregon, and Washington and

the *Nevada* counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey. These States may select hunting seasons not to exceed 16 consecutive days between September 15, 1989, and the Sunday closest to January 1, 1990. The daily bag and possession limits may not excceed 4 band-tailed pigeons.

California may zone by selecting hunting seasons of 16 consecutive days for each of the following two zones:

A. In the counties of Apline, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity; and

B. The remainder of the State.

Four-Corners States (Arizona, Colorado, New Mexico and Utah). These States may select hunting seasons not to exceed 30 consecutive days between September 1 and November 30, 1989. The daily bag and possession limits may not exceed 5 and 10, respectively. The season shall be open only in the areas delineated by the respective States in their hunting regulations. New Mexico may divide its State into a North Zone and a South Zone along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and along Interstate Highway 25 from Socorro to the Texas State line. Between September 1 and November 30, 1989, in the North Zone, and October 1 and November 30, 1989, in the South Zone; hunting seasons not to exceed 20 consecutive days in each zone may be selected.

23. *Mourning doves.* (No change). Outside framework dates—September 1, 1989 and January 15, 1990, except as otherwise provided. States in the Eastern (EMU) and Central (CMU) Management Units were offered an option of a season length of 70 half or full days with daily bag and possession limits of 12 and 24, respectively, *or* a season length of 60 half or full days with daily bag and possession limits of 15 and 30, respectively. EMU and CMU States were allowed to select hunting zones without penalty and to split the season into not more that 3 time periods. In the Western Management Unit (WMU) Idaho, Nevada, Oregon, Utah and Washington are offered not more than 30 consecutive days between September 1, 1989, and January 15, 1990; and Arizona and California are offered not more than 60 days to be split between 2 periods, September 1–15, 1989, and November 1, 1989—January 15, 1990; bag and possession limits are 10 and 20, respectively.

The Service proposes to offer these options during the 1989–90 hunting season, pending results of the call-count survey and receipt of additional information and recommendations.

Additional information. The Texas proposal for experimental white-winged and white-tipped dove seasons will also affect mourning doves.

24. *White-winged and white-tipped doves.* (No change). Arizona, California, Nevada, New Mexico, and Texas may select hunting seasons between September 1 and December 31, 1989, and daily bag limits as stipulated below.

Arizona may select a hunting season of not more than 30 consecutive days running concurrently with the mourning dove season (see mourning dove frameworks—WMU above). The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after opening day.

Nevada, in the counties of Clark and Nye, and in the *California* counties of Imperial, Riverside, and San Bernardino, the daily bag and possession limits of mourning and white-winged doves may not exceed 10 and 20, respectively, singly or in the aggregate, and the season length must conform to the mourning dove season (either a 60-day split season or a 30-day consecutive season as stipulated under mourning dove frameworks—WMU above).

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone. The daily limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, including no more than 2 mourning doves and 2 white-tipped doves; and the possession limit may not exceed 20 white-winged, mourning, and white-tipped doves in the aggregate including no more than 4 mourning doves and 4 white-tipped doves in possession.

In addition, Texas may also select a hunting season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1989 (September 20, 1989, in South Zone), and Janaury 25, 1990, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning, and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged and not more than 2 of which may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning, and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 of which may be white-tipped doves.

Florida may select a white-winged dove season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1989, and January 15, 1990, and coinciding with the mourning dove season. The daily bag limit of both species in the aggregate may not exceed 12 (or 15 under the alternative), of which not more than 4 may be whitewings. The possession limit of both species in the aggregate may not exceed 24 (or 30 under the alternative) of which not more than 8 may be whitewings.

Additional information. In a letter to the Service dated January 24, 1989, the Texas Parks and Wildlife Department requested an experimental season that would permit an aggregate daily bag limit of 12 white-winged, mourning, and white-tipped doves to include no more than 2 white-tipped doves during the Special 4-day white-winged dove season in Texas. This proposal would liberalize the aggregate bag limit from 10 to 12 and allow up to 12 mourning doves (whereas the current limit restricts the number of mourning doves to 2). The Service requests the proposal be modified to include details of how the proposed experiment would be conducted and evaluated, and that the proposal be reviewed by Central Flyway Council.

25. *Migratory bird hunting seasons in Alaska.* (Change.)

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1989–90

Outside Dates: Between September 1, 1989, and January 26, 1990, Alaska may select seasons on waterfowl, snipe, and sandhill cranes, subject to the following limitations:

Shooting Hours: Sunrise to sunset daily.

Hunting Seasons:

Ducks, geese, and brant—Not more than 107 consecutive days for ducks, geese and brant in each of the following: North Zone (State Game Management Units 11–13 and 17–26); Gulf Coast Zone (State Game Management Units 5–7, 9, 14–16, and 10—Unimak Island only); Southeast Zone (State Game Management Units 1–4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10—except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak

Zone. Exceptions: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. Throughout the State there is no open hunting season for Aleutian Canada geese, cackling Canada geese and emperor geese.

Snipe and sandhill cranes—An open season concurrent with the duck season.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of not more than 5 and a possession limit of 15 ducks. Daily bag and possession limits in the North Zone are 8 and 24, and in the Gulf Coast Zone they are 6 and 18, respectively. These basic limits may not include more than 2 pintails daily and 6 in possession. There is no open season on canvasbacks. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and American and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A maximum basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be Greater white-fronted (white-fronted) or Canada geese, singly or in the aggregate of these species. Throughout the State there is no open hunting season for Aleutian and Cackling Canada geese and emperor geese.

Brant—A maximum daily bag limit of 2 and a possession limit of 4.

Common snipe—A maximum daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 3 and a possession limit of 6.

Tundra swan—In Management Unit 22 an experimental permit season for tundra swans may be continued.

26. *Migratory game birds in Puerto Rico and in the Virgin Islands.* (No change.)

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1989–90

Shooting hours: Between sunrise and sunset daily for ducks; and between one-half hour before sunrise to sunset for doves and pigeons.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between November 5, 1989, and February 28, 1990, Puerto Rico may select hunting seasons as follows:

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens (common gallinules), and common snipe. The season may be split into 2 segments.

Daily Bag and Possession Limits:

Ducks—Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*), which are protected by the Commonwealth of Puerto Rico.

Coots—There is no open season on coots, i.e., common coots (*Fulica americana*) and Caribbean coots (*Fulica caribaea*).

Common Moorhens—Not to exceed 6 daily and 12 in possession, except that the season is closed on purple gallinules (*Porphyrula martinica*).

Common snipe—Not to exceed 6 daily and 12 in possession.

Closed Areas: No open season for ducks, moorhens and gallinules, and snipe is prescribed in the Municipality of Culebra and on Desecheo Island.

Doves and Pigeons

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1989, and January 15, 1990, as follows:

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas: No open season for doves and pigeons is prescribed in the following areas:

Municipality of Culebra and Desecheo Island—closed under Commonwealth regulations.

Mona Island—closed to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

El Verde Closure Area—consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) all lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one (1) kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rico parrot (*Amazona vittata*) presently listed as an endangered species under the Endangered Species Act of 1973.

Cidra Municipality and Adjacent Closure Areas consisting of all of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south to Highway 1 on Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain (Puerto Rican plain) pigeon (*Columba inornata wetmorei*), locally known as "Paloma Sabanera," which is present in the above locale in small numbers and is presently listed as an endangered species under the Endangered Species Act of 1973.

Proposed Framework for Selecting Open Season Dates for Hunting Migratory Birds in the Virgin Islands, 1989–90

Shooting Hours: Between sunrise and sunset daily for ducks; and between one-half hour before sunrise to sunset daily for doves and pigeons.

Ducks

Outside Dates: Between December 1, 1989, and January 31, 1990, the Virgin Islands may select a duck hunting season as follows:

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*).

Doves and Pigeons

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1989, and January 15, 1990, as follows:

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for common ground-doves or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds.

Zenaida dove *(Zenaida aurita)*—mountain dove.

Bridled quail dove *(Geotrygon mystacea)*—Barbary dove, partridge (protected).

Common Ground-dove *(Columbina passerina)*—stone dove, tobacco dove, rola, tortolita (protected).

Scaly-naped pigeon *(Columba squamosa)*—red-necked pigeon, scaled pigeon.

27. *Migratory game bird seasons for falconers.* (Change.)

Proposed Special Falconry Frameworks

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall between September 1, 1989, and March 10, 1990.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting seasons and extended falconry seasons in all States including those that do not select an extended falconry season. The more liberal frameworks established in 1988 are continued. This change in bag limits is intended to simplify the falconry regulations.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish regulations for the State.

Regular Seasons: General hunting regulations, including seasons and hours, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season. Daily bag and possession limits for all permitted migratory birds shall not exceed 3 and 6, respectively, singly or in the aggregate, during regular hunting seasons in all States, including those that do not select an extended falconry season.

Note: Total season length for all hunting methods combined may not exceed 107 days for any species (or groups of species) in a geographical area.

28. *Hawaii mourning doves.* (No change.) The mourning dove is the only migratory game bird occurring in Hawaii in numbers to permit hunting. It is proposed that mourning doves may be taken in Hawaii in accordance with regulations set by the State of Hawaii as has been done in the past and subject to the applicable provisions of Part 20 of Title 50 CFR. Such a season must be within the constraints of applicable migratory bird treaties and annual regulatory frameworks. These constraints provide that the season must be within the period of September 1, 1989, and January 15, 1990, the length may not exceed 60 (or 70 under the alternative) days; and the daily bag and possession limits may not exceed 15 and 30 (or 12 and 24 under the alternative) doves, respectively. Other applicable Federal regulations relating to migratory game birds shall also apply.

29. *Migratory Bird Hunting on Indian Reservations.* In the September 3, 1985, **Federal Register** (50 FR 35762) the Service implemented guidelines for migratory bird hunting regulations on Federal Indian reservations and ceded lands, and has annually established special hunting regulations for certain tribes since the 1985–86 hunting seasons. The Service intends to employ the guidelines and establish special migratory game bird hunting regulations for interested Indian tribes in 1989–90. In the February 27, 1989, **Federal Register** (54 FR 8221), the Service published a notice requesting proposals from Indian tribes that wish to establish special 1989–90 migratory game bird hunting regulations be submitted no later than June 5, 1989. In a later **Federal Register** document the Service will publish for public review the pertinent details of proposals received from tribes.

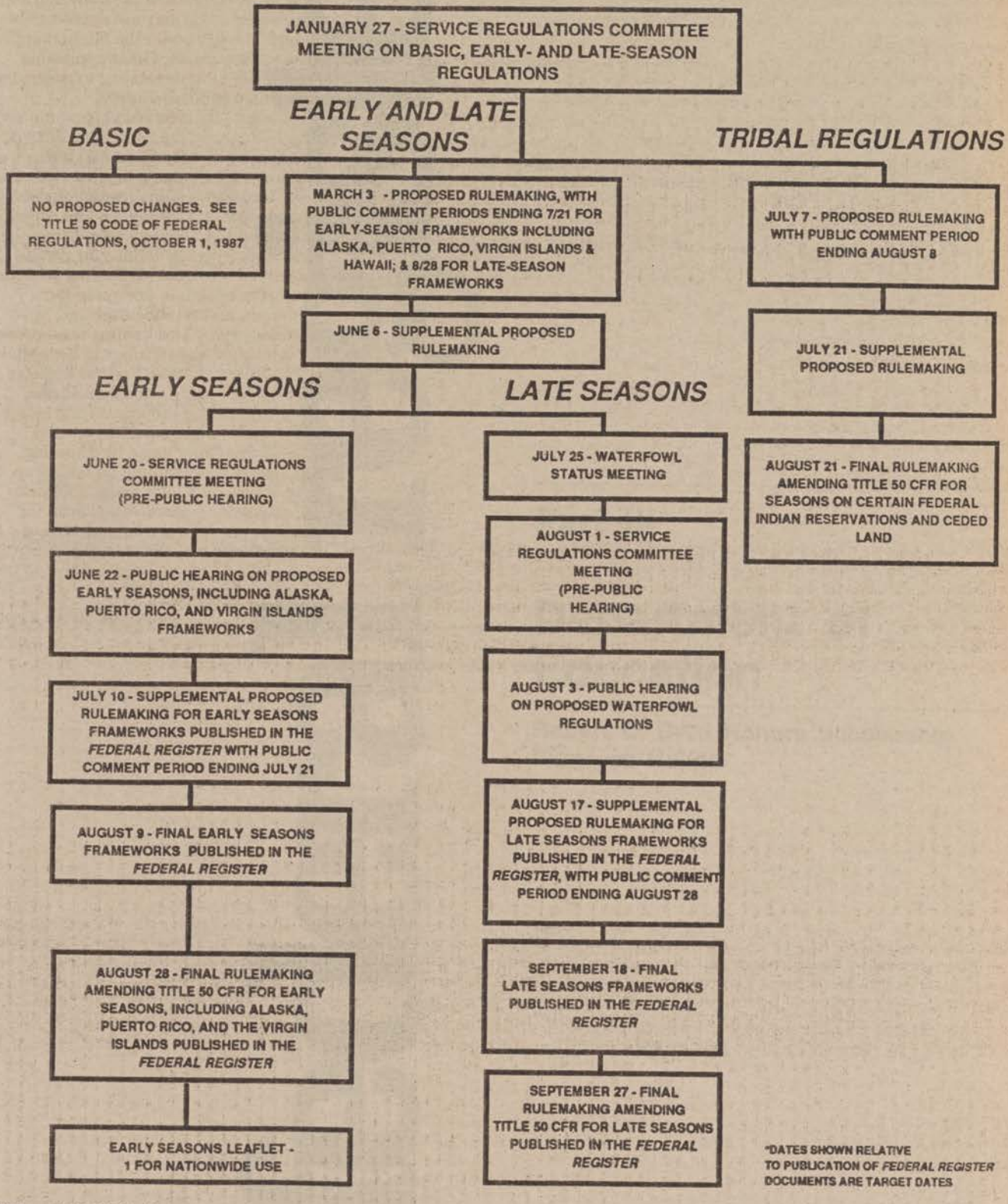
Dated: March 10, 1989.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

BILLING CODE 4310-55-M

1989 SCHEDULE OF REGULATIONS MEETINGS AND *FEDERAL REGISTER* PUBLICATIONS*



[FR Doc. 89-7138 Filed 3-24-89; 8:45 am]
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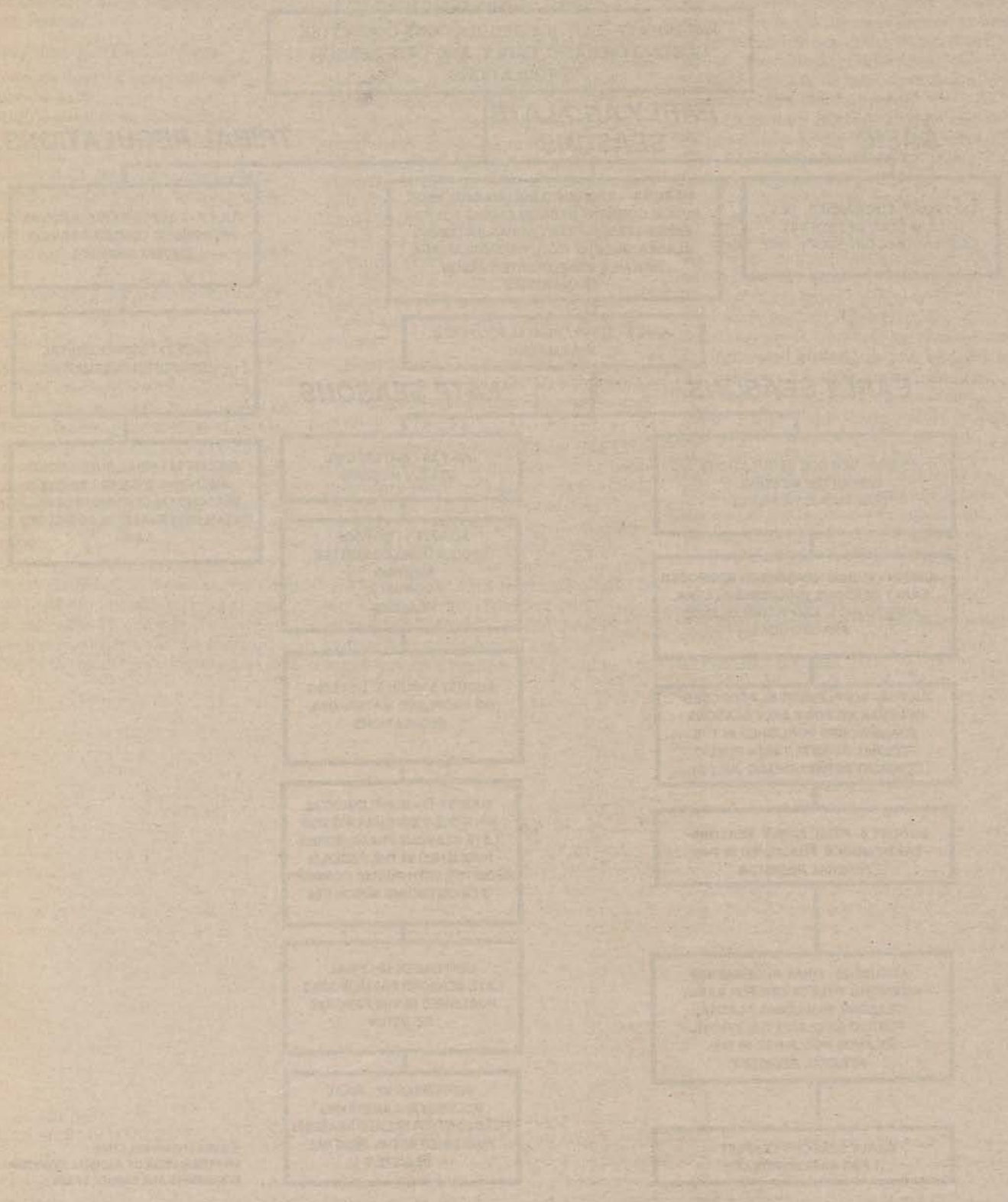

federal register

Monday
March 27, 1989

Part III

Department of Education

Robert C. Byrd Honors Scholarship Program; Notice

Part III

Department of Education

DEPARTMENT OF EDUCATION

Robert C. Byrd Honors Scholarship Program

AGENCY: Department of Education.

ACTION: Notice of final procedures for implementing the Robert C. Byrd Honors Scholarship Program in fiscal year 1989.

SUMMARY: The Secretary establishes procedures necessary to implement certain aspects of the Robert C. Byrd Honors Scholarship Program (the Byrd Scholarship Program) in fiscal year 1989 in accordance with the provisions of the program statute (Title IV, Part A, Subpart 6 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070d–31 *et seq.*), as superseded by Pub. L. 100–436, the Department of Education Appropriations Act, 1989 (1989 Appropriations Act). Proposed regulations governing all aspects of the Byrd Scholarship Program were published on September 30, 1988, at 53 FR 38660. Information as to the applicability of the final regulations will be provided when they are published. Grant awards to the States for fiscal year 1989 are governed by the General Education Provisions Act, the Education Department General Administrative Regulations, applicable provisions of the program statute and the final program regulations, and the procedures in this notice.

EFFECTIVE DATE: This notice takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this notice, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Fred H. Sellers, Chief, State Student Incentive Grant Section (Room 4018, ROB 3), Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–5447, Telephone (202) 732–4507.

SUPPLEMENTARY INFORMATION: Under the Byrd Scholarship Program, the Secretary makes available, through grants to the States, scholarships to outstanding high school graduates for the first year of study at institutions of higher education. In the 1989 Appropriations Act, Congress appropriated $8.2 million for the Byrd Scholarship Program. Pursuant to the 1989 Appropriations Act, as was also the case in fiscal years 1987 and 1988, sections 419G(b) and 419I(a) of the program statute do not apply to the administration of the program in fiscal year 1989. The Secretary adopts the following procedures for fiscal year 1989 in lieu of the statutory provisions which have been superseded by the 1989 appropriation language. These procedures are necessary for the administration of those aspects of the program which, due to superseding statutory provisions in the Appropriations Act of 1989, are not governed by provisions of the program statute.

1. The Secretary allots to the States the funds appropriated for the Byrd Scholarship Program in fiscal year 1989 in accordance with the provisions of section 419D of the program statute, except that the amount allotted for scholarship payments to each State is $1,500 multiplied by the number of scholarships that the Secretary has assigned to the State. The Secretary assigns to each State participating in the program the number of Byrd Scholarships which bears the same ratio to the total number of scholarships made available to all States as the State's school-aged population (ages five through seventeen) bears to the total school-aged population in all participating States, except that no State shall receive fewer than 10 scholarships. The population figures used to calculate the allotment of funds are determined by the most recently available data from the United States Census Bureau.

2. States shall administer their fiscal year 1989 allotments under the Byrd Scholarship Program, for scholarships for academic year 1989–90, in accordance with applicable provisions of the program statute and the final program regulations. However, since sections 419G(b) and 419I(a) of the program statute do not apply to the fiscal year 1989 appropriation, States shall also administer their fiscal year 1989 allotments in accordance with the following procedures—

(a) Byrd Scholars shall be selected solely on the basis of demonstrated outstanding academic achievement, promise of continued academic achievement, and the geographic consideration described in item 2(b) below.

(b) Byrd Scholars shall be selected in such a way that all parts of a State are fairly represented, and no part of a State has a disproportionate share of awards.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. The Secretary solicited public comments on these same procedures, resulting from identical appropriation language in the 1987 Appropriations Act, in fiscal year 1987, through a Notice of Proposed Procedures published in the **Federal Register**. No comments were received. The same special procedures were subsequently published in final form and implemented in fiscal year 1988. Since it is imperative for State educational agencies to receive their program allotments in time to make scholarship awards and payments by the end of the high school academic year during which the scholars have graduated, as required by section 419I(b) of the program statute (20 U.S.C. 1070d–39(b)), the Secretary finds that publication of a Notice of Proposed Procedures for fiscal year 1989 is impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

(Authority: 20 U.S.C. 1070d–31 *et seq.*)

(Catalog of Federal Domestic Assistance No. 84.185, Robert C. Byrd Honors Scholarship Program)

Dated: March 16, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89–7231 Filed 3–24–89; 8:45 am]

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federal register

Monday
March 27, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125, and 135
Minimum Equipment List (MEL) Requirements; Notice of Proposed Rulemaking and Clarification and Extension of Comment Period

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 129, and 135

Minimum Equipment Lists (MEL)

Relationship Thereto of Persons Authorized Deviation and Clarification and Extension of Compliance Period

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, and 135

[Docket No. 25780; Notice No. 89-2]

RIN 2120-AC86

Minimum Equipment List (MEL) Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); clarification and extension of comment period.

SUMMARY: In the January 23, 1989, issue of the **Federal Register** (54 FR 3320), the Federal Aviation Administration (FAA) published a notice of proposed rulemaking (NPRM) addressing the use of a minimum equipment list (MEL). The comment period on this rule was to end on March 24. However, some of the early comments reveal a need to change that date in order to provide clarification of the current language of the NPRM. The primary concern is the language of proposed §§ 121.628(a)(4) and 125.201(a)(4). The published language is incorrect and may be misleading. Moreover, the heading for § 135.179 is incorrect. This document serves to correct these circumstances and to provide for a 30-day extension of the comment period.

DATES: The comment period is extended to April 26, 1989.

FOR FURTHER INFORMATION CONTACT: Marlene G. Livack, Project Development Branch (AFS-240), Air Transportation Division, Office of Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-3748.

SUPPLEMENTARY INFORMATION:

Correction of the Notice

§ 121.628 [Corrected].

On p. 3323, column one, the third paragraph is corrected to read as follows:

"(4) Records identifying the inoperable instruments and equipment and the information required by paragraph (a)(3)(ii) of this section must be available to the pilot."

§ 125.20 [Corrected].

On p. 3323, column two, the fourth full paragraph is corrected to read as follows:

"(4) Records identifying the inoperable instruments and equipment and the information required by paragraph (a)(3)(ii) of this section must be available to the pilot."

§ 135.179 [Corrected].

On p. 3323, column two, the final heading should read, "§ 135.179 Inoperable instruments and equipment," vice "§ 135.179 Inoperable instruments and equipment for multiengine aircraft."

Finally, the comment period will be extended to April 26, 1989.

Issued in Washington, DC, on March 22, 1989.

Carol S. Rayburn,

Acting Director, Flight Standards Service.

[FR Doc. 89-7219 Filed 3-24-89; 8:45 am]

BILLING CODE 4910-13-M

federal register

Monday
March 27, 1989

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 1, 3, 4, 9, 15, 37, and 52
Federal Acquisition Regulation (FAR); Procurement Integrity; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 3, 4, 9, 15, 37, and 52

Federal Acquisition Regulation (FAR); Procurement Intergrity

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Department of Defense, General Services Administration, and National Aeronautics and Space Administration are considering changes to Parts 1, 3, 4, 9, 15, 37, and 52 of the FAR to implement section 6, Procurement Integrity, of the Office of Federal Procurement Policy (OFPP) Act Amendments of 1988, Pub. L. 100-679.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 26, 1989 to be considered in the formulation of a final rule. It is anticipated that an interim rule will be published in a subsequent **Federal Register** notice in order to comply with the May 16, 1989, date mandated by Pub. L. 100-679 for issuance of implementing regulations and guidelines. Comments received in response to this publication of a proposed rule will be considered in the formulation of a final rule and, as time permits, in the formulation of an interim rule. Parties interested in having their comments considered in formulation of the interim rule are encouraged to submit their comments as soon as possible.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 89-23 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background

Section 6 of the OFPP Act Amendments of 1988 amended the OFPP Act by adding section 27, Procurement Integrity, which has been codified as section 423, Title 41 of the United States Code.

The section on procurement integrity prohibits certain activities by competing contractors and Government procurement officials during the conduct of Federal procurements. In general, these prohibited activities involve soliciting or discussing post-Government employment, offering or accepting a gratuity, or soliciting or disclosing proprietary or source selection information.

The section also (a) contains certification and disclosure provisions for both contractors and Government officials, (b) imposes post-employment restrictions on Government personnel, and (c) provides for contractual, civil, and criminal penalties.

B. Regulatory Flexibility Act

The proposed change to the FAR may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The impact is likely to occur because, in connection with contract awards, extensions, and modifications in excess of $100,000, offerors will be required to gather and provide to the Government certain information regarding the activities of the offeror during the conduct of the procurement. Therefore, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be sent to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts will also be considered. Such comments must be submitted separately and cite FAR Case 89-610 in correspondence.

C. Paperwork Reduction Act

This proposed rule contains information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. Annual reporting burden: The annual reporting burden is estimated as follows: Respondents, 20,000; responses per respondent, 20; total annual responses, 400,000; hours per response, 5 min.; and total response burden hours, 33,333. Annual recordkeeping burden: The annual recordkeeping burden with respect to incorporating the training requirement into training programs, is estimaed as follows: Respondents, 20,000; responses per respondent, 20; total annual responses, 400,000; hours per response, 20 min.; and total response burden hours, 13,333. Accordingly, an information collection approval request has been submitted to OMB for expedited review pursuant to 5 CFR 1320.18. Public comments concerning the request should be submitted to OMB, Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503 by April 26, 1989.

List of Subjects in 48 CFR Parts 1, 3, 4, 9, 15, 37, and 52

Government procurement.

Dated: March 24, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, 48 CFR Parts 1, 3, 4, 9, 15, 37, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 3, 4, 9, 15, 37, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.105 is amended by adding in numerical order two FAR segments and corresponding OMB control numbers to read as follows:

1.105 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
* * * * *	
52.203-8	9000-0XXX.
52.203-9	9000-0XXX.
* * * * *	

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 3.104 and sections 3.104-1 through 3.104-12 are added to read as follows:

Sec.

3.104 Procurement integrity.

3.104-1 General.

Section 3.104 implements section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (which hereinafter in this section of the FAR may be referred to as "the Act").

3.104-2 Applicability.

(a) This subsection applies to all contracts, modifications, and extensions awarded on or after May 16, 1989.

3.104-3 Statutory prohibitions.

As provided in subsections 27 (a), (b), (c), and (e) of the Act, the following conduct is prohibited:

(a) *Prohibited conduct by competing contractors.* During the conduct of any Federal agency procurement of property or services, no competing contractor or any officer, employee, representative, agent, or consultant of any competing contractor shall knowingly—

(1) Make, directly or indirectly, any offer or promise of future employment or business opportunity to, or engage, business opportunity with, any procurement official of such agency;

(2) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any procurement official of such agency; or

(3) Solicit or obtain, directly or indirectly, from any officer or employee of such agency, prior to the award of a contract any proprietary or source selection information regarding such procurement.

(b) *Prohibited conduct by procurement officials.* During the conduct of any Federal agency procurement of property or services, no procurement official of such agency shall knowingly—

(1) Solicit or accept, directly or indirectly, any promise of future employment or business opportunity from, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any officer, employee, representative, agent, or consultant of a competing contractor;

(2) Ask for, demand, exact, solicit, seek, accept, receive, or agree to receive, directly or indirectly, any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of any competing contractor for such procurement; or

(3) Disclose any proprietary or source selection information regarding such procurement directly or indirectly to any person other than a person authorized by the head of such agency or the contracting officer to receive such information.

(c) *Disclosure to unauthorized persons.* During the conduct of any Federal agency procurement of property or services, no person who is given authorized or unauthorized access to proprietary or source selection information regarding such procurement, shall knowingly disclose such information, directly or indirectly, to any person other than a person authorized by the head of such agency or the contracting officer to receive such information.

(d) [Reserved]

(e) *Restrictions on government officials and employees.* No Government official or employee, civilian, or military, who has participated personally and substantially in the conduct of any Federal agency procurement or who has personally reviewed and approved the award, modification, or extension of any contract for such procurement shall—

(1) Participate in any manner, as an officer, employee, agent, or representative of a competing contractor, in any negotiations leading to the award, modification, or extension of a contract for such procurement, or

(2) Participate personally and substantially on behalf of the competing contractor in the performance of such contract,

during the period ending 2 years after the last date such individual participated personally and substantially in the conduct of such procurement or personally reviewed and approved the award, modification, or extension of any contract for such procurement.

3.104-4 Definitions.

As used in this section—

(a) (1) "Competing contractor," with respect to any procurement (including any procurement using procedures other than competitive procedures of property or services) means any entity that is, or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such procurement, and includes any other person acting on behalf of such an entity.

(2) "Competing contractor" includes the incumbent contractor in the case of a modification or extension.

(b) "Cost or pricing data" means that cost or pricing data, as defined in 15.801, which are submitted or made available by the contractor in support of the instant proposal.

(c) (1) "During the conduct of any Federal agency procurement of property or services" means the period beginning with the development, preparation, and issuance of a procurement solicitation, and concluding with the award, modification, or extension of a contract, and includes the evaluation of bids or proposals, selection of sources, and conduct of negotiations.

(2) This period begins on the date identified pursuant to 3.104-7. Activities that occurred before May 16, 1989, if any, do not violate the Act.

(d) "Government official" means members of the uniformed services as defined in section 101(3) of Title 37, United States Code, or a person who is appointed to a position in the Federal Government under Title 5, United States Code, to include a person under a temporary appointment.

(e) "Modification" means the addition of new work to a contract, which requires a justification and approval (see Subpart 6.3). It does not include—the exercise of an option where all terms of the option are set forth in the contract; change orders; administrative changes; or any other contract changes that are within the scope of the contract.

(f) "Money, gratuity, or other thing of value," except where expressly permitted by agency standards of conduct regulations, means any gift, favor, entertainment, hospitality, transportation, loan, or any other tangible item, and any intangible benefits, including discounts, passes, and promotional vendor training, given or extended to or on behalf of Government personnel, their immediate families, or households, for which fair market value is not paid by the recipient or the Government.

(g) "Participated personally and substantially" means active and significant involvement of the individual in activities directly related to the procurement. To participate "personally" means directly, and includes the participation of a subordinate when actually directed by the supervisor in the matter. To participate "substantially" means that the employee's involvement must be of significance to the matter. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. An employee whose responsibility is the review of a procurement solely for compliance with administrative control or budgetary considerations, and who reviews a document involved in the procurement for such a purpose, should not be

regarded as having participated substantially in the procurement.

(h) (1) "Procurement official" means any civilian or military official or employee of an agency who has participated personally and substantially in the conduct of the agency procurement concerned, including all officials and employees who are responsible for reviewing or approving the procurement.

(2) "Procurement official" includes any civilian or military official or employee of an agency who has participated personally and substantially in the following activities:

(i) Development of acquisition plans.

(ii) Development of specifications, statements of work, or purchase descriptions/requests.

(iii) Evaluation or selection of a contractor.

(iv) Negotiation or award of a contract or modification or extension to a contract.

(3) For purposes of subparagraphs (h)(1) and (h)(2), the term "employee of an agency" includes a contractor, subcontractor, consultant, expert, or advisor (other than a competing contractor) acting on behalf of, or providing advice to, the agency with respect to any phase of the agency procurement concerned.

(i) "Property" includes supplies as defined at 2.101.

(j) (1) "Proprietary information" means—

(i) Information contained in a bid or proposal;

(ii) Cost or pricing data; or

(iii) Any other information submitted to the Government by a contractor and designated as proprietary, in accordance with law or regulation, by the contractor, the head of the agency, or the contracting officer.

(2) It does not include information—

(i) Furnished without limitations on its use;

(ii) That is otherwise available to the Government, to a competing contractor, or to the public without restrictions; or

(iii) Contained in subdivisions (j)(1) (i) or (ii) of this subsection that the contracting officer determines, after consultation with the contractor, would not reasonably be expected to cause the contractor competitive harm if disclosed to other competing contractors (see 3.104–5(d)).

(k) (1) "Source selection information" means information determined by the head of the agency or the contracting officer to be information—

(i) The disclosure of which to a competing contractor would jeopardize the integrity or successful completion of the procurement concerned; and

(ii) Which is required by statute, regulation, or order to be secured in a source selection file or other restricted facility to prevent such disclosure;

(2) "Source selection information," includes documents, or oral or written extracts thereof, related to a particular procurement that—

(i) Are contained in—

(A) Acquisition plans (see 7.105);

(B) Source selection plans, including technical evaluation plans, such as those described in 15.612(c);

(C) Field pricing reports and preaward surveys;

(D) Prenegotiation memoranda (see 15.807);

(E) Price negotiation memoranda (see 15.808(b)); or

(ii) Result from the source selection process of such procurement, including competitive range determinations, rankings, recommendations, technical reports of the source selection board, or recommendations of the source selection advisory boards; and

(iii) That are marked with an identification that identifies the document as being contained in one of the categories specified in paragraphs (k)(2) (i) or (ii) of this subsection.

(3) "Source selection information" also includes information not identified in subparagraph (k)(2) that is related to a particular procurement and determined by the head of the agency, designee, or the contracting officer to be information, the disclosure of which to a competing contractor would jeopardize the integrity or successful completion of the procurement concerned, provided such information is marked with the legend—

Source Selection Information—See FAR 3.104

(4) The contracting officer may, in writing, designate sections of any of the documents in subparagraph (k)(2) of this subsection as not being source selection information if the contracting officer determines that disclosure of such sections would not jeopardize the integrity or successful completion of the procurement. Any such designation must specify the sections not considered to be source selection information and must be appended to the document.

3.104–5 Disclosure to unauthorized persons.

(a) Proprietary and source selection information shall be protected from disclosure to unauthorized persons.

(b) The contracting officer is authorized access to any proprietary and source selection information pertaining to the procurement for which he or she is responsible. The contracting officer also has the authority, in accordance with applicable agency regulations or procedures, to authorize other persons, or classes of persons, access to proprietary or source selection information when access is necessary to the conduct of the procurement or when it would serve a useful purpose, and when it would not jeopardize the integrity or successful completion of the procurement involved. Persons granted access shall be listed in the contract file (see 3.104–9(f)).

(c) Agencies may issue regulations or procedures to further define and identify those persons who are authorized access to proprietary or source selection information regarding the agency's procurement of property or services.

(d) (1) If the contracting officer believes that information marked as proprietary information (see 3.104–4(j)) is not proprietary, the contractor affixing the marking shall be notified in writing and given a reasonable opportunity to justify the proprietary marking. If the contractor agrees that the material is not proprietary information, or does not respond in a reasonable time to the notice, the contracting officer may remove the proprietary marking and the information may be released.

(2) After reviewing any justification submitted by the contractor, if the contracting officer determines that the proprietary marking is not justified, the contracting officer shall so notify the contractor in writing.

(3) Information marked by the contractor as proprietary shall not be released for a period of ten business days from the issuance of the notice in subparagraph (d)(2) of this subsection. Thereafter, unless the contractor takes other action to prevent such release, the contracting officer may release the information.

(e) Competing contractors may disclose, or authorize the Government to disclose, their company specific proprietary information to any employee of the contractor and to other persons where not otherwise prohibited by law.

(f) A person who discloses proprietary or source selection information, even though the information has not been stamped as such, shall not be considered to have violated the disclosure prohibitions set forth herein unless that person knows, or should have known, such information is proprietary or source selection information.

3.104–6 Restrictions on Government officials and employees.

For purposes of evaluating any certificate required by the Act, the term "Government official or employee," as

used in subsection 27(e) of the Act refers to a person who was a Government official or employee on or after May 16, 1989.

3.104-7 Identification of date of beginning of procurement.

(a) For prime contracts for the development or production of major elements of a major system, the program manager shall publish in the Commerce Business Daily a notice when the development of a procurement solicitation begins. For purposes of this paragraph (a), a major system is a system where:

(1) The total expenditures for research, development, test and evaluation for the system are estimated to be more than $75,000,000, or the eventual total expenditure for procurement is expected to be more than $300,000,000; or

(2) The system is designated a "major system" by the head of the agency responsible for the system.

(b) For other procurements, the contracting officer shall identify in the provision at 52.203-8, Requirement for Certificate of Procurement Integrity, the date that development of a procurement solicitation began. Development of a procurement solicitation includes development of proposed modifications and extensions. This date shall be the earliest date of identifiable specific action leading to the development or preparation of the procurement solicitation. In this connection, the following events shall be considered:

(1) Requirements computation at inventory control points.

(2) Publication of the advance synopsis of an R&D procurement.

(3) Convening of a formal acquisition strategy meeting.

(4) Development of an acquisition plan.

(5) Development of a purchase request.

(6) Development of a statement of work.

(7) Development of specifications specifically for the instant procurement.

(8) Publication of the agency's intent to develop or acquire systems, subsystems, supplies, or services.

(9) Request for the negotiation or award of a modification or extension.

3.104-8 Knowing violations—duty to inquire.

(a) For some procurements, neither competing contractors nor all procurement officials will have notice when the development of a particular procurement solicitation has begun. However, certain acts that are forbidden by the Act would be inappropriate at any time. It is generally recognized that potential contractors should not offer, and agency officials should not solicit gratuities at any time. Similarly, potential contractors should not solicit, and agency personnel should not offer, proprietary or source selection information at any time. However, potential contractors may offer, and Government employees may solicit, employment except as prohibited by law. During the period prior to the issuance of the procurement solicitation, contractors who wish to discuss employment opportunities with a possible procurement official should ask the other party whether he or she is a procurement official for a procurement for which the contractor is a competing contractor before conducting any discussions related to employment. Similarly, procurement officials who wish to solicit employment from a potential competing contractor should ask whether the contractor is reasonably likely to become a competing contractor on any procurement for which the procurement official is responsible.

(b) Agency personnel should be presumed to know the procurement for which they are procurement officials. Contractor personnel are presumed to know the procurements for which they are reasonably likely to be competing. Individuals who do not, in fact, know whether they are procurement officials, or whether the organization they represent is a competing contractor, should defer any discussions regarding employment until these questions can be resolved by consulting appropriate parties within their respective organizations.

(c) A competing contractor shall not be considered to have knowingly violated the prohibitions set forth in subsection 27(a)(1) of the Act if the contractor has made an inquiry in good faith of the possible procurement official and has been advised that the individual is not a procurement official for any procurement for which the contractor is a competing contractor. Similarly, a procurement official shall not be considered to have knowingly violated the prohibitions set forth in subsection 27(b)(1) of the Act, if the procurement official made inquiry in good faith of the potential contractor, and had been advised that the contractor would not be a competing contractor on a procurement under the responsibility of the procurement official.

(d) A competing contractor or procurement official shall not be considered to have knowingly violated the prohibitions in subsection 27(a)(3) or 27(b)(3) of the Act if, before source selection information or proprietary information was solicited, obtained, or disclosed, the contractor or procurement official—

(1) Had made an inquiry in good faith of the appropriate Government or contractor official regarding whether information not released in accordance with 3.104-4(j) or (k) was proprietary or source selection information; and

(2) Had been advised by such official that the information was not proprietary or source selection information.

3.104-9 Certification requirements.

(a) *Applicability.* In accordance with subsection 27(d)(7)(A) of the Act, certification requirements set forth herein apply to contracts in excess of $100,000 awarded on or after May 16, 1989, and to any contract extensions or modifications in excess of $100,000 executed on or after May 16, 1989, except as provided in paragraph (e) of this subsection.

(b) *Contractor certification.* (1) In accordance with subsection 27(d)(1) of the Act, an agency shall not award a contract for the procurement of property or services to any competing contractor, or agree to any modification or extension of a contract, unless the officer or employee of such contractor responsible for the offer or bid for such contract, or the modification or extension of such contract—

(i) Certifies in writing to the contracting officer responsible for such contract that such officer or employee of the competing contractor has no information concerning a violation or possible violation of subsections 27 (a), (b), (c), or (e) of the Act (see 3.104-3) as implemented in the FAR and agency supplements; or

(ii) Discloses to such contracting officer any and all such information and certifies in writing to such contracting officer that any and all such information has been disclosed; and

(iii) Certifies in writing to such contracting officer that each officer, employee, agent, representative, and consultant of such competing contractor who has participated personally and substantially in the preparation or submission of such bid or offer, or in such modification or extension of such contract, as the case may be, has certified to such competing contractor that he or she—

(A) Is familiar with, and will comply with, the requirements of subsection 27(a) of the Act (see 3.104-3) as implemented in the FAR and agency supplements; and

(B) Will report immediately to the officer or employee of the competing

contractor responsible for the offer or bid for any contract or the modification or extension of such contract, as the case may be, any information concerning a violation or possible violation of subsections 27 (a), (b), (c), or (e) of the Act (see 3.104–3) as implemented in the FAR and agency supplements.

(2) The signed certification prescribed in the solicitation provision in 3.104–10 shall be submitted as follows:

(i) For sealed bids, by each bidder with bid submission.

(ii) For procurements using the two-step sealed bidding procedure (see Subpart 14.5), with submission to the Government of step two sealed bids.

(iii) For requests for proposals (RFP) or quotations (RFQ), by the successful offeror as close as practicable to, but in no event later than, contract award.

(iv) For modifications or extensions of contracts in excess of $100,000, prior to execution.

(v) For indefinite delivery-type contracts, if the estimated value of all orders to be placed under the contract is expected to exceed $100,000, from all bidders with bid submission, or from the successful offeror for other than sealed bids as close as practicable, but in no event later than, the date of contract award.

(vi) For all other procurement actions, prior to award or execution.

(c) *Contracting officer certifications.* (1) In accordance with subsection 27(d)(2) of the Act, a Federal agency may not award a contract for the procurement of property or services, or agree to any modification or extension of any such contract, unless the contracting officer responsible for such procurement—

(i) Certifies in writing to the head of such agency that the contracting officer has no information concerning a violation or possible violation of subsections 27 (a), (b), (c), or (e) of the Act (see 3.104–3) as implemented in the FAR or agency supplements; or

(ii) Discloses to the head of such agency any and all such information and certifies in writing that any and all such information has been disclosed.

(2) Immediately prior to execution of the procurement action, the contracting officer shall certify as follows and maintain the completed certificate in the contract file:

Contracting Officer Certificate of Procurement Integrity

(i) I, [Name of contracting officer], hereby certify that, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of the prohibitions * of paragraphs (a), (b), (c), or (e) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as implemented in the FAR and agency supplements, occurring during the conduct of this procurement (*contract/modification number*). The terms of section 27 (together with applicable regulations) have been made available to me.

(ii) Violations or possible violations: (*Continue on plain bond paper if necessary. ENTER "NONE" IF NONE EXISTS.*)

_____

_____

_____

(*Signature of contracting officer and date*)

* The prohibitions of section 27 became effective on May 16, 1989.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITES STATES CODE, SECTION 1001.

(End of certification)

(d) *Additional certifications.* (1) In accordance with subsection 27(d)(3) of the Act, any procurement official or any competing contractor, at any time during the conduct of any Federal agency procurement of property or services, may be required—

(i) To certify in writing that such procurement official or the officer or employee of the competing contractor responsible for the offer or bid for such contract or the modification or extension of such contract has no information concerning a violation or possible violation of subsections 27 (a), (b), (c), or (e) of the Act (see 3.104–3 as implemented in the FAR and agency supplements occurring during the procurement); or

(ii) To disclose any and all such information and to certify in writing that any and all such information has been disclosed.

(2) Additional certifications may be required only after receiving the approval of the head of the contracting activity (HCA) or designee, so long as the designee is at least one level above the contracting officer and is of flag, SES, or equivalent rank.

(e) *Exceptions.* Pursuant to subsection 27 (d)(7)(B) of the Act, certification requirements set forth in 3.104–9 do not apply—

(1) When contracting with a foreign government or an international organization that is not required to be awarded using competitive procedures pursuant to section 303(c)(4) of the Federal Property and Administrative Service Act of 1949 or section 2304(c)(4) of Title 10, United States Code (see 6.302–4); or

(2) In an exceptional case, when the head of the agency concerned determines in writing that the certification requirement should be waived. This authority may not be delegated. The contracting officer shall submit the request for waiver in accordance with agency procedures. The request shall clearly identify the procurement or class of procurements and provide the rationale for the requested waiver. The decision of the agency head shall state the reasons for approving or disapproving the waiver. The agency head shall promptly notify Congress in writing of each waiver approved.

(f) *Recordkeeping requirements.* In accordance with subsection 27(d)(5) (A) and (B) of the Act, the contracting officer responsible for the award, modification, or extension of a contract shall maintain, as part of the contract file—

(1) All certifications made by procurement officials and competing contractors with regard to the action, as required by this subsection; and

(2) A record of all persons who have been authorized by the head of the agency or the contracting officer to have access to proprietary or source selection information regarding the procurement. When classes of persons have been authorized, this record shall identify the class of persons so authorized.

3.104–10 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.203–8, Requirement for Certificate of Procurement Integrity, with the date inserted in accordance with 3.104–7, in all solicitations where the resultant contract award is expected to exceed $100,000, unless a determination of inapplicability has been made pursuant to 3.104–9(e).

(b) The contracting officer shall insert the clause at 52.203–9, Requirement for Certificate of Procurement Integrity-Modification, in all solicitations and contracts in excess of $100,000, unless a determination of inapplicability has been made pursuant to 3.104–9(e).

(c) The contracting officer shall insert the clause at 52.203–10, Remedies for Illegal or Improper Activity, in all solicitations and contracts, or modifications or extensions to contracts.

3.104–11 Processing possible violations.

(a) If any certfication received by or signed by the contracting officer contains any information of a violation or possible violation of subsections 27(a), (b), (c), or (e) of the Act (see 3.104–3), the contracting officer shall

determine whether the reported violation has any impact on the pending award or selection of the source therefor. If the contracting officer concludes that there is no impact, he or she may proceed with award and report the violation or possible violation, together with documentation supporting that conclusion, in accordance with agency procedures. If the contracting officer determines that the violation or possible violation impacts the pending award, he or she shall withhold award and promptly forward the certification and related information to the HCA or designee, so long as the designee is at least one level above the contracting officer and is of flag, SES, or equivalent rank.

(b) The HCA or designee receiving a certification describing an actual or possible violation of subsections 27 (a), (b), (c), or (e) of the Act, shall review all information available and take the following actions, as appropriate:

(1) Cause an additional investigation to be conducted.

(2) Refer the information disclosed to appropriate criminal investigative agencies.

(c) If the HCA or designee determines that the prohibitions of section 27 of the Act have been violated, then he or she may direct or recommend the contracting officer—

(1) If a contract has not been awarded, to—

(i) Neutralize the impact of the violation;

(ii) Terminate the procurement;

(iii) Disqualify an offeror; or

(iv) Take any other appropriate actions in the interest of the Government.

(2) If a contract or modification has been awarded, to—

(i) Seek applicable contractual remedies, including profit recapture as provided for at 52.203–10, Remedies for Illegal or Improper Activity;

(ii) Void or rescind the contract, in accordance with the procedures in 3.705; or

(iii) Refer the matter to the agency suspension and debarment official.

(d) If the HCA or designee receiving the certification of a violation or possible violation determines that award is justified by urgent and compelling circumstances or is otherwise in the interest of the Government, then the official may authorize the contracting officer to award the contract after notification of the head of the agency in accordance with agency procedures.

3.104–12 Separation and training requirements.

(a) Subsection 27(d)(4) of the Act provides that if a procurement official leaves the Government during the conduct of such a procurement, such official shall certify that he or she understands the continuing obligation not to disclose proprietary or source selection information.

(b) Subsection 27(j) of the Act provides that the head of each Federal agency shall establish a procurement ethics program for its procurement officials. The program shall, at a minimum—

(1) Provide for the distribution of written explanations of subsection 27(b) of the Act to such procurement officials; and

(2) Require each such procurement official, as a condition of serving as a procurement official, to certify that he or she is familiar with the provisions of subsection 27(b) of the Act and will not engage in any conduct prohibited by such subsection, and will report immediately to the contracting officer any information concerning a violation or possible violation of subsections 27 (a), (b), (c), or (e) of the Act as implemented in the FAR and agency supplements.

(c) Agencies shall establish procedures and programs to comply with the requirements of paragraphs (a) and (b) of this section for their officers and employees.

(d) Consultants serving as procurement officials must also comply with the separation and training requirements specified in paragraphs (a) through (c) of this section (see also 37.208).

PART 4—ADMINISTRATIVE MATTERS

4. Section 4.802 is amended by adding paragraph (e) to read as follows:

4.802 Contract files.

* * * * *

(e) Contents of contract files that are proprietary or source selection information identified in 3.104–4 shall be protected from disclosure to unauthorized persons (see 3.104–5).

PART 9—CONTRACTOR QUALIFICATIONS

5. Section 9.105–3 is amended by adding paragraph (c) to read as follows:

9.105–3 Disclosure of preaward information.

* * * * *

(c) Preaward survey information is source selection information as described at 3.104–4 and should be protected accordingly.

6. Section 9.106–3 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

9.106–3 Interagency preaward surveys.

* * * * *

(b) The surveying activity shall furnish with its report a list of all persons who have had access to the information contained in the preaward survey (see 3.104–9(f)(2)).

PART 15—CONTRACTING BY NEGOTIATION

7. Section 15.804–1 is amended by adding a third sentence to paragraph (a) to read as follows:

15.804–1 General.

(a) * * * Cost or pricing data submitted for a specific procurement, if not marked as proprietary information, may be considered source selection information; if so it should be marked and be protected accordingly (see 3.104–4(k)).

* * * * *

8. Section 15.805–5 is amended by adding paragraphs (l) and (m) to read as follows:

15.805–5 Field pricing support.

* * * * *

(l) Field pricing reports, including audit and technical reports, are source selection information as defined at 3.104–4(k), and should be marked with the appropriate legend and protected accordingly.

(m) Field pricing reports, including audit and technical reports, shall include a list of all persons who have had access to the information contained therein (see 3.104–(9)(f)(2)).

PART 37—SERVICE CONTRACTING

9. Section 37.207 is amended by removing at the end of paragraph (d) the word "and"; by removing the period at the end of paragraph (e) and inserting in its place "; and"; and by adding paragraph (f) to read as follows:

37.207 Contracting officer responsibilities.

* * * * *

(f) Separation and training requirements at 3.104–12 are complied with by consultants serving as Government procurement officials.

10. Section 37.208 is added to read as follows:

37.208 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 52.237–8, Procurement Integrity for Consultants, in all contracts for consulting services to be used in support of the conduct of Federal agency procurement.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 52.203–8 is added to read as follows:

52.203–8 Requirement for Certificate of Procurement Integrity.

As prescribed in 3.104–10(a), insert the following provision:

Requirement for Certificate of Procurement Integrity (Mar 1989)

(a) *Definitions.* (1) The definitions at FAR 3.104–4 are hereby incorporated in this provision.

(2) "During the conduct of this procurement" means the period that began on _____ (date) (see FAR 3.104–7) and concludes with the award or execution of a contract resulting from this solicitation.

(b) *Certifications.* As required in paragraph (c) of this provision, the officer or employee responsible for this offer shall execute the following certification:

Certificate of Procurement Integrity

(1) I, [Name of certifier], am the officer or employee responsible for the preparation of this offer or bid and hereby certify that, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of the prohibitions* of subsection 27 (a), (b), (c), or (e) of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as implemented in the FAR and agency supplements, occurring during the conduct of this procurement (*solicitation number*). The terms of section 37 (together with the applicable implementing regulations) have been made available to me.

(2) As required by subsection 27(d)(1)(B) of the Office of Federal Procurement Policy Act (41 U.S.C. 423), I further certify that each officer, employee, agent, representative, and consultant of [Name of offeror] who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as implemented in the FAR and agency supplements, and will report immediately to me any information concerning a violation or possible violation of subsections 27 (a), (b), (c), or (e) of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as implemented in the FAR and agency supplements, pertaining to this procurement.

(3) Violations or possible violations:
(*Continue on plain bond paper if necessary. ENTER NONE IF NONE EXISTS*)

[Signature of the Officer or Employee Responsible for the Offer and date]

[Typed Name of the Officer or Employee Responsible for the Offer]

*The prohibitions of section 27 became effective on May 16, 1989.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of certification)

(c) The signed certification in paragraph (b) of this provision shall be executed and submitted as follows:

(1) If this is an invitation for sealed bids, with bid submissions exceeding $100,000.

(2) If this is a procurement using the two-step sealed bidding procedure (see FAR Subpart 14.5), with bids exceeding $100,000, with submission to the Government of step-two sealed bids.

(3) If this is a request for proposal (RFP) or quotation (RFQ), by the successful offeror as close as practicable to, but in no event later than, the date of award of a contract exceeding $100,000.

(4) If this is an invitation for bids for an indefinite delivery-type contract, and if the estimated value of orders to be placed under the contract is expected to exceed $100,000, with the bid submission.

(5) If this is an RFQ or RFP for an indefinite delivery-type contract, and if the estimated value of orders expected to be placed under the contract is expected to exceed $100,000, by the successful offeror as close as practicable to, but in no event later than, the date of contract award.

(6) For other procurement actions in excess of $100,000, prior to award as specified by the Contracting Officer.

(d) Pursuant to FAR 3.104–9(d), the offeror may be requested to execute additional certifications and disclosures at the request of the Government. Failure of an offeror to submit the certifications required by paragraph (b) of this provision will render the offeror ineligible for contract award.

(e) A certification and disclosure that a possible violation of the prohibited conduct exists will not necessarily result in the withholding of award under this solicitation. However, the Government, after evaluation of the disclosure, may terminate this procurement or take any other appropriate actions in the interest of the Government, such as disqualification of the offeror.

(f) In making the certification in subparagraph (b)(2) of this provision, the offeror may rely upon the certification by an officer, employee, agent, representative, or consultant that it is in compliance with the requirements of subsections 27 (a), (b), (c), or (e) of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as implemented in the FAR and agency supplements unless the offeror knows, or should have known, of reasons to the contrary. The offeror may rely upon periodic certifications that must be obtained at least annually, supplemented with periodic training programs.

(g) The certifications in paragraphs (b) and (d) of this provision are a material representation of fact upon which reliance will be placed in awarding a contract.

(End of provision)

12. Section 52.203–9 is added to read as follows:

52.203–9 Requirement for certificate of procurement integrity-modification.

As prescribed in 3.104–10(b), insert the following clause:

Requirement For Certificate of Procurement Integrity-Modification (Mar 1989)

(a) *Definitions.* (1) The definitions set forth in FAR 3.104–4 are hereby incorporated in this clause.

(2) "During the conduct of this procurement" means the period that began on _____ (date) (see FAR 3.104–7) and concludes with the award or execution of this modification or extension.

(b) Contractor agrees that it will execute the certification set forth in paragraph (c) of this clause, when requested by the contracting officer in connection with the award or execution of any modification or extension of this contract.

(c) *Certification.* As required in paragraph (b) of this clause, the officer or employee responsible for the modification proposal shall execute the following certification:

Certificate of Procurement Integrity (Mar 1989)

(1) I, [Name of certifier] am the officer or employee responsible for the preparation of this modification proposal and hereby certify that, with the exception of any information described in this certification, I have no information concerning a violation or possible violation of the prohibitions* of subsection 27 (a), (b), (c), or (e) of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as implemented in the FAR and agency supplements, occurring during the conduct of this procurement *(contract/modification number)*. The terms of section 27 together with applicable implementing regulations) have been made available to me.

(2) As required by subsection 27(d)(1)(B) of the Office of Federal Procurement Policy Act (41 U.S.C. 423), I further certify that each officer, employee, agent, representative, and consultant of [Name of offeror] who has participated personally and substantially in the preparation or submission of this proposal has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as implemented in the FAR and agency supplements, and will report immediately to me any information concerning a violation or possible violation of subsections 27 (a), (b), (c), or (e) of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as implemented in the FAR and agency supplements, pertaining to this procurement.

(3) Violations or possible violations:
(Continue on plain bond paper if necessary. ENTER NONE IF NONE EXISTS)

[Signature of the Officer or Employee Responsible for the Modification Proposal and date]

[Typed Name of the Officer or Employee Responsible for the Modification Proposal]

* The prohibitions of section 27 became effective on May 16, 1989.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of certification)

(d) In making the certification in paragraph (2) of the certificate, the Contractor may rely upon the certification by an officer, employee, agent, representative, or consultant that it is in compliance with the requirements of subsections 27 (a), (b), (c), or (e) of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as implemented in the FAR or agency supplements unless the Contractor knows of or should have known of reasons to the contrary. The Contractor may rely upon periodic certifications that must be obtained annually, supplemented with periodic training programs.

(e) The certification required by paragraph (c) of this clause is a material representation of fact upon which reliance will be placed in executing this modification.

(End of clause)

13. Section 52.203–10 is added to read as follows:

52.203–10 Remedies for illegal or improper activity.

As prescribed in 3.104–10(c) insert the following clause:

Remedies For Illegal or Improper Activity (Mar 1989)

(a) The Government, at its election, may reduce the contract price by the amount of any anticipated profit determined as set forth in paragraph (c) of this clause; if the head of the agency or his designee, determines that (1) the Procurement Integrity Certificate submitted by the offeror in connection with award, modification, or extension of this contract was incomplete, inaccurate, or false at the time it was submitted; or (2) if a Procurement Integrity Certificate was not required, there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) as implemented in the FAR and agency supplements.

(b) Prior to making such a determination, the agency head or designee shall provide to the Contractor a written notice of the action being considered and the basis therefor. The Contractor shall have a period determined by the agency head or designee, but in no event less than 30 calendar days after receipt of such notice to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or designee may, upon good cause shown, determine to reduce the contract price by less than the amount of any profit determined under this paragraph (c) of this clause.

(c) The amount of anticipated profits referred to in paragraph (a) of this clause shall be—

(1) In the case of cost-plus-fixed-fee contract, the amount of the fee specified in the contract at the time of award;

(2) In the case of fixed-price incentive or cost-plus-incentive-fee contract, the amount of the target profit or fee specified in the contract at the time of award; or

(3) In the case of a firm-fixed-price contract, the amount of anticipated profit determined by the Contracting Officer, after notice to the Contractor and opportunity to comment, from records or documents in existence prior to the date of the award, modification, or extension of the contract.

(d) In addition to the remedy in paragraph (a) of this clause, the Government may terminate this contract or modification for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

14. Section 52.237–8 is added to read as follows:

52.237–8 Procurement integrity for consultants.

As prescribed in 37.208, insert the following clause:

Procurement Integrity For Consultants (Mar 1989)

(a) *Definitions.* The definitions in FAR 3.104–4 are hereby incorporated in this clause.

(b) The contractor shall establish a procurement ethics training program for its employees serving as procurement officials. The program shall, at a minimum—

(1) Provide for the distribution of written explanations of the provisions of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) and applicable implementing regulations to such employees, and

(2) Require each such employee, as a condition of serving as a procurement official, to certify to the Contracting Officer that he or she is familiar with the provisions of the Act, as implemented in the FAR and agency supplements, and will not engage in any conduct prohibited by subsections 27 (a), (b), (c), or (e) of the Act, as implemented in the FAR and agency supplements, and will report immediately to the Contracting Officer any information concerning a violation or possible violation of the prohibitions.

(c) If a Contractor employee serving as a procurement official ceases performance of these duties during the conduct of such a procurement, such employee shall certify to the Contracting Officer that he or she understands the continuing obligation not to disclose proprietary or source selection information.

(End of clause)

[FR Doc. 89–7126 Filed 3–24–89; 8:45 am]

BILLING CODE 6820–JC–M

federal register

Monday
March 27, 1989

Part VI

Department of Defense

48 CFR Parts 203 and 208

Department of Defense Federal Acquisition Regulation Supplement; Procurement Integrity; Proposed Rule and Request for Comments

DEPARTMENT OF DEFENSE

48 CFR Parts 203 and 208

Department of Defense Federal Acquisition Regulation Supplement; Procurement Integrity

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Department of Defense is considering revisions to DFARS Parts 203 and 208 to implement Section 6, Procurement Integrity, of the Office of Federal Procurement Policy (OFPP) Act Amendments of 1988 (Pub. L. 100–679). Revisions to the Federal Acquisition Regulation implementing Section 6 of the Act are contained in the Federal Register of March 27, 1989.

DATE: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 26, 1989, to be considered in the formulation of a final rule. Please cite DAR Case 88–315 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Excecutive Secretary, ODASD(P)/DARS, c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 6 of the Office of Federal Procurement Policy (OFPP) Act Amendments of 1988 (Pub. L. 100–679) amended the OFPP Act by adding section 27, Procurement Integrity. Section 27 contains prohibitions involving: (a) Conduct by offerors, contractors and Government procurement officials, (b) unauthorized disclosure of proprietary or source selection information, and (c) restrictions on Government officials and employees after they leave Government service. The Department of Defense is proposing revisions to DFARS Parts 203 and 208 to provide coverage implementing recent revisions to the Federal Acquisition Regulation regarding Procurement Integrity.

B. Regulatory Flexibility Act

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the revisions are internal to DoD. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 89–610 in correspondence.

C. Paperwork Reduction Act

The rule does not contain information collection requirements and therefore does not require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 203 and 208

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 203 and 208 be amended as follows:

1. The authority citation for 48 CFR Parts 203 and 208 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 203.104–4 is added to read as follows:

203.104–4 Supplemental definitions.

(f) For purposes of DoD, the agency regulation is DoD Directive 5500.7, Standards of Conduct.

3. Section 203.104–5 is added to read as follows:

203.104–5 Disclosure to unauthorized persons.

(c) Within DoD, those persons participating in the source selection process as described in DoD Directive 4105.62, Selection of Contractual Sources for Major Defense Systems, and those persons participating in the Defense Acquisition Board process as described in DoD Directive 5000.1, Major System Acquisitions, are authorized access to proprietary data and source selection information.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

4. Section 208.7006–5 is amended by designating the existing paragraph as paragraph (a); and by adding paragraph (b), to read as follows:

208.7006–5 Specifications, drawings, and other purchase data.

* * * * *

(b) The Requiring Department shall inform the Procuring Department if any furnished data is proprietary or source selection information as defined in FAR 3.104–4. Further, the Requiring Department shall furnish to the Procuring Department a list of all persons who have had access to such proprietary or source selection information (see FAR 3.104–9(f)).

[FR Doc. 89–7127 Filed 3–24–89; 8:45 am]

BILLING CODE 3810–01–M

federal register

Monday
March 27, 1989

Part VII

Department of Defense

Department of the Army

Army Science Board; Open Meeting Notice

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 11 April 1989

Time: 0800–1500 hours

Place: Chicago, Illinois

Agenda: The Army Science Board Ad Hoc Subgroup for Threat of AIDS on Operational Deployments of Army Forces to a Theater will hold its final report writing session. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89–7387 Filed 3–24–89; 11:27 am]

BILLING CODE 3710–08–M

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4	14.00	Jan. 1, 1988
5 Parts:		
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1200-End, 6 (6 Reserved)	11.00	Jan. 1, 1988
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[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts

[6] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters

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